

MONTANA LEGISLATIVE HISTORY

Chapter 550 19 95

Bill H 159 S _____ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Feb 03 ☒ C

Feb 11 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Feb 11 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 08 ☒ C

Mar 10 ☒ C

_____ ☐ C

_____ ☐ C

Mar 10 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Free Conference Committee

Apr 7 ☒

HB 155 INTRODUCED BY L. SMITH, ET AL.
 REPEAL THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT

1/12 INTRODUCED
 1/12 FIRST READING
 1/12 REFERRED TO HEALTH CARE SELECT
 1/17 HEARING
 2/10 FISCAL NOTE REQUESTED
 2/15 FISCAL NOTE RECEIVED
 2/15 FISCAL NOTE PRINTED
 2/22 MISSED TRANSMITTAL DEADLINE
 DIED IN COMMITTEE

HB 156 INTRODUCED BY COBB
 PROVIDE THAT PERSONAL PROPERTY THAT HAS BEEN DEPRECIATED TO
 HAVE A SALVAGE VALUE OF LESS THAN \$1,000 IS CONSIDERED TO
 HAVE NO MARKET VALUE FOR PROPERTY TAX PURPOSES

1/12 INTRODUCED
 1/12 FIRST READING
 1/12 REFERRED TO TAXATION
 1/13 FISCAL NOTE REQUESTED
 1/18 FISCAL NOTE RECEIVED
 1/18 FISCAL NOTE PRINTED
 1/27 HEARING
 2/11 MOTION FAILED TO TAKE FROM COMMITTEE
 AND PLACE ON 2ND READING 48 38
 3/29 MISSED TRANSMITTAL DEADLINE FOR 71ST DAY
 DIED IN COMMITTEE

HB 157 INTRODUCED BY DENNY, ET AL.
 INCREASE PENALTIES FOR CERTAIN SEX OFFENSES
 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN
 SERVICES

1/12 INTRODUCED
 1/12 FIRST READING
 1/12 REFERRED TO JUDICIARY
 1/13 FISCAL NOTE REQUESTED
 1/16 FISCAL NOTE RECEIVED
 1/17 FISCAL NOTE PRINTED
 2/03 HEARING
 2/13 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/14 2ND READING PASSED 96 4
 2/15 3RD READING PASSED 95 3
 TRANSMITTED TO SENATE
 2/20 FIRST READING
 2/20 REFERRED TO JUDICIARY
 3/08 HEARING
 3/11 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 2ND READING CONCURRED 43 4
 3/17 TAKEN FROM 3RD READING AND
 3/20 PLACED BACK ON 2ND READING
 3/23 2ND READING CONCURRED AS AMENDED 50 0
 3/24 3RD READING CONCURRED 49 0
 RETURNED TO HOUSE WITH AMENDMENTS
 4/03 2ND READING AMENDMENTS NOT CONCURRED 97 3
 4/03 FREE CONFERENCE COMMITTEE APPOINTED
 4/07 HEARING
 4/10 FREE CONFERENCE COMMITTEE REPORT NO. 1

4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	95	4
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	95	5
	SENATE		
4/04	FREE CONFERENCE COMMITTEE APPOINTED		
4/10	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	39	11
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	38	11
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR CHAPTER NUMBER 550 EFFECTIVE DATE: 10/01/95		

HB 158 INTRODUCED BY FUCHS, ET AL.
REVISE THE STATE SCAFFOLDING LAWS

1/12	INTRODUCED		
1/12	FIRST READING		
1/12	REFERRED TO JUDICIARY		
1/23	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/02	2ND READING PASSED AS AMENDED	94	5
2/04	3RD READING PASSED	90	8
	TRANSMITTED TO SENATE		
2/06	FIRST READING		
2/06	REFERRED TO JUDICIARY		
3/02	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	92	3
4/07	3RD READING AMENDMENTS CONCURRED	93	3
4/10	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR CHAPTER NUMBER 404 EFFECTIVE DATE: 04/13/95		

HB 159 INTRODUCED BY TREXLER

ALLOW AN ELECTION ADMINISTRATOR TO CANCEL AN ANNUAL ELECTION
IN WHICH THERE IS NO FILED CANDIDATE AND ALLOW A GOVERNING
BODY OF A POLITICAL SUBDIVISION OF A COUNTY TO MAKE
APPOINTMENT TO THE PUBLIC OFFICE

1/12	INTRODUCED		
1/12	FIRST READING		
1/12	REFERRED TO LOCAL GOVERNMENT		
1/17	HEARING		
1/26	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE DIED IN COMMITTEE		

HOUSE BILL NO. 157

INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON,
HEAVY RUNNER, SHEA, GALVIN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INCREASING PENALTIES FOR CERTAIN SEX
OFFENDERS TO BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR
LIFE, TO BE PLACED IN A COMMUNITY BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA
CORRECTIONAL INSTITUTION OR PROGRAM FOR NOT LONGER THAN THE PERMISSIBLE PRISON
SENTENCE; INCREASING FINES FOR THOSE OFFENSES; INCREASING THE MAXIMUM PENALTY FOR
CERTAIN SEX OFFENSES TO LIFE IMPRISONMENT PROVIDING THAT THOSE PERSONS CERTAIN SEXUAL
OFFENDERS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS
A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE
DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502,
45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-18-202, 46-23-502, 46-23-506, AND 46-23-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual
contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
county jail for ~~any~~ a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the
offender shall be:

~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for

1 any a term of not less than 2 years or more than ~~20~~ 100 years and may be fined not more than \$50,000;
2 or
3 ~~(b) sentenced to the department of corrections and human services for placement by the~~
4 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
5 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
6 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
7 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
8 ~~be fined not more than \$50,000.~~

9 (4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit
10 the offense or flight after the attempt or commission.

11 (5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
12 is 3 or more years older than the victim."

13
14 **Section 2.** Section 45-5-503, MCA, is amended to read:

15 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
16 intercourse without consent with another person commits the offense of sexual intercourse without
17 consent. A person may not be convicted under this section based on the age of the person's spouse, as
18 provided in 45-5-501(1)(b)(iii).

19 (2) A person convicted of sexual intercourse without consent shall be:

20 ~~(a) imprisoned~~ **PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT** in the state prison for
21 a term of not less than 2 years or more than ~~20~~ 100 years and may be fined not more than \$50,000,
22 except as provided in 46-18-222; ~~or~~

23 ~~(b) sentenced to the department of corrections and human services for placement by the~~
24 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
25 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
26 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
27 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
28 ~~be fined not more than \$50,000.~~

29 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
30 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse

without consent, the offender shall be:

~~(i) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for any a term of not less than 2 4 years or more than 40 100 years and may be fined not more than \$50,000, except as provided in 46-18-222. An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.; or

~~(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$50,000.~~

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be:

~~(i) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for a term of not less than 5 years or more than 40 100 years and may be fined not more than \$50,000, except as provided in 46-18-222; or

~~(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$50,000.~~

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without

1 consent" includes an attempt to commit the offense or flight after the attempt or commission."

2
3 **Section 3.** Section 45-5-504, MCA, is amended to read:

4 **"45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the
5 person's own sexual desire of himself or the sexual desire of any person, exposes his the person's genitals
6 under circumstances in which he the person knows his the conduct is likely to cause affront or alarm
7 commits the offense of indecent exposure.

8 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
9 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

10 (b) On a second conviction, ~~he the person~~ shall be fined an amount not to exceed \$1,000 or be
11 imprisoned in the county jail for a term of not more than 1 year, or both.

12 (c) On a third or subsequent conviction, ~~he the person~~ shall be:

13 ~~(i) fined an amount not to exceed \$10,000 or be imprisoned~~ PUNISHED BY LIFE IMPRISONMENT
14 OR BY IMPRISONMENT in the state prison for a term of not LESS THAN 5 YEARS OR more than 5 100
15 years, or both; or AND MAY BE FINED NOT MORE THAN \$10,000

16 ~~(iii) sentenced to the department of corrections and human services for placement by the~~
17 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
18 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
19 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
20 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
21 ~~be fined not more than \$10,000."~~

22
23 **Section 4.** Section 45-5-507, MCA, is amended to read:

24 **"45-5-507. Incest.** (1) A person commits the offense of incest if ~~he the person~~ knowingly marries,
25 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
26 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
27 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
28 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

29 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
30 consent is ineffective if the victim is less than 18 years old.

1 (3) A person convicted of incest shall be:

2 ~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
3 any a term not to exceed 20 100 years or be fined an amount not to exceed \$50,000, ~~or both; or~~

4 ~~(b) sentenced to the department of corrections and human services for placement by the~~
5 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
6 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
7 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
8 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
9 ~~be fined not more than \$50,000.~~

10 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
11 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
12 be:

13 ~~(a) imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY IMPRISONMENT in the state prison for
14 any a term not to exceed 20 OF NOT LESS THAN 4 YEARS OR MORE THAN 100 years and may be fined
15 not more than \$50,000; ~~or~~

16 ~~(b) sentenced to the department of corrections and human services for placement by the~~
17 ~~department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
18 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
19 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
20 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
21 ~~be fined not more than \$50,000.~~

22 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
23 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
24 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
25 The amount, method, and time of payment must be determined in the same manner as provided for in
26 46-18-244."

27
28 Section 5. Section 45-5-625, MCA, is amended to read:

29 "45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of
30 children if the person knowingly:

1 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
2 conduct, actual or simulated;

3 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
4 videotapes, or records a child engaging in sexual conduct, actual or simulated;

5 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
6 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

7 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~
8 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual
9 conduct, actual or simulated;

10 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in
11 which children are engaged in sexual conduct, actual or simulated; or

12 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing
13 that the activity is of the nature described in those subsections; or

14 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual
15 conduct, actual or simulated.

16 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of
17 sexual abuse of children shall be:

18 ~~(i) fined not to exceed \$10,000 or be imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY
19 IMPRISONMENT in the state prison for ~~any~~ a term not to exceed ~~20~~ 100 years, ~~or both; or~~ AND MAY BE
20 FINED NOT MORE THAN \$10,000

21 ~~(ii) sentenced to the department of corrections and human services for placement by the department~~
22 ~~in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN~~
23 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
24 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
25 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
26 ~~be fined not more than \$10,000.~~

27 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of
28 children shall be:

29 ~~(i) fined not to exceed \$10,000 or be imprisoned~~ PUNISHED BY LIFE IMPRISONMENT OR BY
30 IMPRISONMENT in the state prison for ~~any~~ a term ~~not to exceed 50~~ OF NOT LESS THAN 4 YEARS OR

MORE THAN 100 years, or both, or AND MAY BE FINED NOT MORE THAN \$10,000

(iii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$10,000.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

SECTION 6. SECTION 46-18-202, MCA, IS AMENDED TO READ:

"46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

- (a) prohibition of the defendant's holding public office;
- (b) prohibition of the defendant's owning or carrying a dangerous weapon;
- (c) restrictions on the defendant's freedom of association;
- (d) restrictions on the defendant's freedom of movement;
- (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall

1 contain a statement of the reasons for the restriction.

2 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
3 individual's rights as enumerated in subsection (1)(a).

4 (4) When the district court imposes a sentence of probation as defined in 46-23-1001, any
5 probation agreement signed by the defendant may contain a clause waiving extradition.

6 (5) Whenever the district court imposes a sentence of imprisonment in the state prison for a
7 violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two
8 consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that
9 the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be
10 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
11 for the protection of society, it shall impose the restriction as part of the sentence and the judgment must
12 contain a statement of the reasons for the restriction."

13
14 **Section 7.** Section 46-23-502, MCA, is amended to read:

15 "46-23-502. **Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions
16 apply:

17 (1) "Department" means the department of corrections and human services provided for in Title
18 2, chapter 15, part 23.

19 (2) "Sexual offender" means a person who has been convicted of a sexual offense.

20 (3) "Sexual offense" means:

21 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-506, 45-5-507 (unless the act
22 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

23 (b) any violation of a law of another state or the federal government reasonably equivalent to a
24 violation listed in subsection (3)(a)."

25
26 **Section 8.** Section 46-23-506, MCA, is amended to read:

27 "46-23-506. **Duration of registration.** (1) A person required to register under 46-18-254,
28 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
29 person's life, except as provided in subsection (2) of this section or during a period of 10 years after
30 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,

1 ~~46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions~~
2 ~~of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which~~
3 ~~the person is in prison.~~

4 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
5 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~
6 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~
7 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~
8 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~
9 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~
10 ~~A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,~~
11 ~~46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of~~
12 ~~the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender~~
13 ~~was convicted~~ THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE
14 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL
15 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER
16 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any
17 written or oral statements of the victim ~~or victims~~. The court may grant the petition upon finding that:

18 (a) ~~the sexual offender~~ has remained a law-abiding citizen; and

19 (b) continued registration is not necessary for public protection and that relief from registration is
20 in the best interests of society.

21 (3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING
22 UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE
23 JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE
24 JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES
25 THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY
26 OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST,
27 SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE
28 JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE
29 OFFENDER'S RIGHT TO PRIVACY."
30

Section 9. Section 46-23-507, MCA, is amended to read:

"46-23-507. Penalty. A sexual offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more than 5 years or a fine may be fined not to exceed \$250 more than \$5,000 \$10,000, or both."

NEW SECTION. Section 10. Dissemination of information in register. Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

NEW SECTION. **Section 11. Codification instruction.** [Section ~~9~~10] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section ~~9~~10].

NEW SECTION. SECTION 12. COORDINATION INSTRUCTION. IF [THIS ACT] AND HOUSE BILL NO. 214 ARE BOTH PASSED AND APPROVED, THEN THE AMENDMENT TO 46-23-502(3)(A) IN HOUSE BILL NO. 214 IS VOID.

-END-

Closing by Sponsor:

REP. MC CULLOCH closed with remarks that the issue is about the procedure involved after a couple have already filed for divorce, court loads and priorities rather than divorce or the convenience of divorce. She said the bill would serve to reduce clogging in the courts, take away anxiety involved in unnecessary court hearings and it will reduce the costs of attorney fees which are not necessary in these cases. She said neither she nor the proponents advocate divorce, but they advocate saving the use of the courts for those who have committed a crime.

{Tape: 2; Side: B}

CHAIRMAN CLARK remarked that the committee would hear HB 214 and HB 157 together since there would be an attempt to combine them due to their similarities. He relinquished the chair to VICE CHAIRMAN ANDERSON.

HEARING ON HB 214 and HB 157

Opening Statement by Sponsors:

REP. KOTTEL, HD 45, presented HB 214 as one which asks for lifetime registration of violent offenders. She stated that Montana's current law requiring registration of sex offenders is only for a ten-year period of time. Failure to register currently is a misdemeanor. HB 214 asks that registration become lifetime, that all violent crimes be included and makes failure to register a felony. She elaborated on those points.

REP. MATT DENNY, HD 63, brought before the committee HB 157 which provides for life sentencing and lifetime registration and supervision of sex offenders. The bill was drafted at the request of the Governor's Council on Corrections and Criminal Justice Policy. He elaborated on the provision for life sentencing to the corrections system which is not subject to reduction in recognition that sex offenders are not curable, and on the provision for lifetime supervision and registration for continuing education and treatment of the offender. The bill also increases the penalties for failure to register or to participate in treatment programs. It also provides for protection of the general public while protecting the privacy of the offender.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services, (DCHS), said HB 157 addresses all the components necessary to deal with sex offenders. He felt it was an innovative approach designed to provide an effective method to respond to those who have committed a sexual offense. He felt the combination of lifetime registration with supervision and treatment would

provide for a safer Montana. On behalf of the Governor and the department, he urged the committee's support.

Dave Ohler, DCHS, offered some technical amendments to HB 157 and explained them. EXHIBIT 8

John Connor, Montana County Attorneys Association, appeared as a proponent of HB 157 on behalf of the Department of Justice and the Attorney General's Council on Law Enforcement. He cited the need for this legislation is enhanced by the fact that one-third of the sex offenders leave prison by means of discharge rather than parole without having completed the sex offender program. They also support HB 214 and especially like the provision of the notification of victims.

{Tape: 2; Side: B; Approx. Counter: 24.0}

Informational Testimony:

A letter from Mike Salvagni, Gallatin County Attorney, was presented as a proponent by Mr. Connor. EXHIBIT 9

Proponents' Testimony Continued:

Henry Hibbard appeared to support HB 214 and suggested an amendment that any person who deals with children or health care for the elderly be fingerprinted as part of a background check to be used as consideration for employment (not a requirement).

Becky Malensek testified concerning her personal experience with the early release of her former husband convicted of a sexual offense who did not take advantage of treatment while incarcerated. She emphasized that stronger follow-up is necessary to protect children from those who will re-offend. She also discussed the disparity between the protected rights of the offender versus the rights of victims and potential victims.

Jane Christman rose in support of HBs 157 and 214. She testified about the death of her son eight years ago at the hands of a released repeat sex offender, Robert Hornbeck.

Derek VanLuchene testified in support of HBs 157 and 214 as the brother of the eight-year-old boy who was murdered in Libby. He currently is a member of law enforcement and testified from the perspective of a victim as well as from his profession.

Ron Silvers, Vice President, Montana Sex Offender Treatment Association, strongly supported these bills. He said the Association takes these issues seriously and described how they address them. He said they do not view lifetime supervision as a punishment, but as an obligation and responsibility.

CHAIRMAN CLARK resumed the chair.

Sandy Heaton, Sex Offender Therapist at Montana State Prison, shared some of her experiences from having worked with both incarcerated and non-incarcerated sex offenders. She spoke as a proponent and agreed with previous testimony. She elaborated on the triggers for the offense.

John Strandel, Cascade County Undersheriff, Montana Peace Officer's Association, served on the subcommittee which reviewed the sex offenders information which was being presented. He rose in support of both bills and specifically testified to facts concerning sex offenders.

Dana Ball reiterated her testimony that she did not think there could be enough laws passed to protect society from sex criminals. She elaborated on the testimony concerning her son who was victimized over a long period of time by a sex offender and his lifetime maintenance as a victim resulting in intense treatment and continual supervision.

{Tape: 2; Side: B; Approx. Counter: 54.2}

Mike Ferriter, Chief of Community Correction Bureau, DCHS, presented written testimony in support of HB 157. EXHIBIT 10

John Thomas, Chairman, State Parole Board, spoke in support of HB 157 and gave the committee their current guidelines in consideration of release of sex offenders.

Opponents' Testimony:

Scott Crichton, Executive Director, ACLU, reluctantly rose in opposition to both HB 157 and HB 214. He submitted written testimony. He said that though it is well-intended, he doubted it would achieve the results hoped for. EXHIBITS 11 and 12

{Tape: 3; Side: A; Approx. Counter: 10.8; Comments: }

Questions From Committee Members and Responses:

REP. TASH asked Mr. Crichton if this legislation would result in litigation.

Mr. Crichton said he believed it would.

REP. TASH asked if, in the case of people who haven't had proper rehabilitation, that wasn't an encroachment on their civil liberties.

Mr. Crichton thought that the need for people to admit to their crimes is central for their successful treatment. He felt that impediments to that in treatment result when they are required to give self-incriminating evidence of offenses committed for which they have not been convicted.

REP. TASH asked Mr. Crichton to be specific in the areas of treatment he found lacking in regards to rehabilitation.

Mr. Crichton said his sense was they need more resources attached to both sex treatment inside and outside the criminal justice system including fiscal relief.

REP. MC GEE asked Ms. Heaton to comment on the elements included in the treatment program described by Mrs. Ball in testimony.

Ms. Heaton refuted the element described by Mrs. Ball and went on to elaborate on what is included.

REP. MC GEE asked what kinds of costs are involved in a continuing treatment program for sexual offenders.

Ms. Heaton said her understanding was that the intent was that the offender would finish his primary treatment and then would go on an aftercare status determined by the therapists and probation and parole. She did not feel the cost would be great.

REP. MC GEE asked REP. DENNY who would pay for treatment for lifetime sexual offenders.

REP. DENNY said the actual outlays for treatment are not covered under this bill.

REP. MC GEE asked if this would apply to existing sexual offenders.

REP. DENNY said the life sentencing portion would not apply to current convicts. He believed life registration would apply upon their release.

{Tape: 3; Side: A; Approx. Counter: 23.3}

REP. MC GEE noted that article 2, section 3 of the Montana Constitution refers to the rights of people and the corresponding responsibilities; and article 2, section 22 speaks to cruel and unusual punishment; and article 2, section 28 speaks to state supervision before rights are restored. Given those three sections, he asked Mr. Crichton if he felt there would be a constitutional challenge to lifetime registration for sexual offenders.

Mr. Crichton said his understanding was that it could be questioned if registration was regulatory in nature or punishment.

REP. MC GEE asked if a murderer is sentenced to life in prison for the crime, would the ACLU consider that cruel and unusual punishment.

Mr. Crichton thought the definition of cruel and unusual punishment was defined constitutionally about what the state metes out to its citizens. He recalled that the Bill of Rights was to protect citizens from its government from having too much power and influence in their private lives.

REP. MC GEE asked if he considered it cruel and unusual punishment when a person is convicted of deliberate homicide and sentenced to the Montana State Prison for life.

Mr. Crichton said he would look each case differently as he expected the court would do. Sentencing someone to life imprisonment isn't in and of itself cruel and unusual punishment. Some instances warrant it.

REP. MC GEE asked if the legislature deemed it appropriate to equate other crimes to deliberate homicide necessitating life imprisonment, would he consider that cruel and unusual punishment.

Mr. Crichton answered, "Sentencing somebody to life but then holding the responsibility for the commitment for life could be construed as trying to end-run the state's constitutional protection that once you have served your time, you are reinstated as a citizen. It appears to me that you are saying that we want to control you for life but you are on your own until you screw up and then we'll control you some more by bringing you back in our custody."

REP. MC GEE asked him to tell this committee what is meant by corresponding responsibilities [in reference to article 2, section 3,] to those individual rights. He read this section to the members of the committee.

Mr. Crichton responded that he probably has a higher sense of responsibility than the average citizen in terms of what is a responsibility in participating in the government and being a productive member of the community. At what point an offender is finished with his punishment is in question. He said he understood that it cannot be determined if a victim is ever finished with carrying the burden of being victimized. He said that the criminal justice system seems open-ended in this regard. He said that from a civil liberties standpoint it is problematic to view the numbers and types of crimes the state will be given the authority to track.

REP. MC GEE referred to article 2, section 28 to discuss the rights of the convicted. "Full rights are restored by termination of state supervision for any offense against the state." He asked if life sentencing would work toward prevention.

Mr. Crichton said he saw the principles of prevention and reformation as linked and they needed to look toward the

potential of people becoming productive members of society. People who are deemed likely to re-offend can be kept behind bars through the criminal justice system. He was concerned about saying, "Once a sex offender, always a sex offender." He questioned this as the way to get at sexual victimization in the society. He was not sure placing a deterrent at the front end is convincing.

REP. SOFT asked how long Ms. Heaton had been working with sex offenders at the prison and further asked about some types of treatment and asked her for data about follow-up success rates.

Ms. Heaton answered that she had worked with the program 15-16 years. She said their data is not complete, but she elaborated on the experience she could and said that these data were accompanied with disclaimers.

REP. SOFT asked if they would be establishing more data with regards to recidivism or success in treatment.

Ms. Heaton said they were working on it.

REP. SOFT wondered if these bills would prove helpful in gathering more accurate data.

Ms. Heaton said it should though it would not be 100%.

REP. SOFT asked Mr. Ohler how they would be tracked and would this program be effective.

Mr. Ohler said a key component to registration is supervision and that is the reason the bill requires lifetime supervision of sex offenders.

REP. SOFT wanted to go on record as mandating that there is a very strict way to follow up and for that data to come back to the next legislature.

{Tape: 3; Side: A; Approx. Counter: 45.7}

REP. SMITH asked Mrs. Ball for details about his follow-up care and need for supervision. Mrs. Ball detailed his current treatment and ongoing problems.

REP. SMITH asked if his treatment program included sexual fantasy and masturbation which was referred to in earlier testimony.

Mrs. Ball said she was challenged by the hospital where her son was treated to obtain a copy of the sex offenders treatment program that is used in the Montana State Prison system where his perpetrator was sent. She related the difficulty in obtaining it and there is a section written by Michael Scolatti referring to that. She could not affirm that they are using that part of the treatment. Her son's treatment did not include it.

REP. SMITH was concerned about leaving the responsibility to the offender to register. She asked about the follow up to registration as required in this bill.

Ms. Heaton said most of that takes place in the community. They will sign a registration release when they leave the prison and they are expected to sign up when they get into a community. When they are on parole follow up is very easy. It is a problem when someone discharges their sentence and they are not under any jurisdiction.

REP. SMITH asked if the community follow up programs are like AA meetings.

Ms. Heaton said the Montana Sex Offender Treatment Association programs are much like what is used in the prison.

REP. SMITH wanted to know if they use the 12-step concept.

Ms. Heaton said not all use that concept though some do.

REP. SMITH asked how many sex offenders in the prison are under treatment and whether it is a volunteer program.

Ms. Heaton replied approximately 100 were in voluntary treatment.

REP. SMITH cited the statistics that 40 enter prison and 30 leave per month and wanted to know how many are sex offenders who have completed treatment. She also asked if there was a waiting list.

Ms. Heaton said she could not answer the first question and that there is a long waiting list causing several months to a year to get into the treatment program.

REP. SMITH asked if the co-dependency program is related to the sex offender program.

Ms. Heaton said they were separate programs but they share inmates in common. It is not uncommon for them to have chemical dependency issues and sex offender issues but are dealt with in different groups.

REP. SMITH questioned the retroactivity concept and how that would work.

Ms. Heaton said she did not know the legalities of a retroactive concept, but that supervision and registration isn't all punitive.

REP. MOLNAR asked a question on behalf of REP. CHRIS AHNER from Mrs. Ball if her son were to become a perpetrator, would she have any problems saying that he would have to be under lifetime supervision.

Mrs. Ball answered, "As his mother, if he became a perpetrator, I would have a problem if there were no laws to protect his victims and I would have a problem if there was nothing I could do except pray that he didn't kill somebody. As a mother I would want every law in place that could give him some boundaries. He has none, he doesn't know right from wrong when it comes to sexual acting out because he never learned."

{Tape: 3; Side: B}

REP. MOLNAR asked Mr. Crichton on behalf of REP. AHNER if the offender is given the choice between imprisonment and castration, would that still be infringing upon their rights.

Mr. Crichton said he did not know how to answer that. It seemed to him that would raise the question of cruel and unusual punishment.

REP. MOLNAR re-asked REP. AHNER'S question in terms of the choice between lifetime imprisonment or lifetime supervision with mandatory treatment and whether that was a violation of their constitutional rights.

Mr. Crichton said ultimately that would be the kind of thing the supreme court would take a look at as laws like this are put in place and enforced.

Closing by Sponsors:

REP. KOTTEL submitted a summary of laws of selected states which have sex offender registration. EXHIBIT 13 She cited a constitutional challenge in Washington which had a retroactive provision in it and that the constitutionality of that ex post facto law was upheld in their Supreme Court. She said she believed that the scales of justice have tipped toward the criminal and that these bills are a start to bring those scales back into balance.

REP. DENNY was reminded as he participated in the hearing that many voices say the problem can't be solved this way, but he had not seen any realistic alternatives. He believed these bills represented those alternatives. He closed by quoting, "We need to think about the rights of the children and the victims."

CHAIRMAN CLARK said these two bills would be put in a subcommittee of both sponsors and REP. MC GEE who would meet to combine the bills to present to the committee as a workable solution.

Motion: REP. CAREY MOVED TO ADJOURN.

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		✗
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

AMENDMENTS TO HOUSE BILL 157 AS INTRODUCED

1. Page 6, line 13
Strike: "45-5-505,"
2. Page 7, line 3.
Strike: "Within 3 days after the petition is filed, the sexual offender shall mail a copy of the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender was convicted."
3. Page 7, line 3.
Following: line 3
Insert: "The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the sexual offender was convicted if the victim's address is reasonably available."

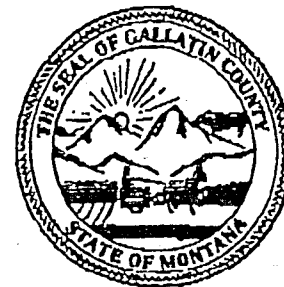
Gallatin County, Montana**Mike Salvagni****County Attorney**

615 South 16th Avenue - Room 202

Bozeman, Montana 59715

Telephone: (406) 585-1410

FAX: (406) 585-1429



February 2, 1995

Rep. Bob Clark, Chairman
Judiciary Committee
Montana House of Representatives
State Capitol
Helena, MT 59701

Re: House Bill 157

Dear Rep. Clark and Members of the Committee:

I planned to be at your hearing on House Bill 157 relating to life time supervision and registration for sex offenders. Because of a conflict with a court hearing I am unable to attend.

House Bill 157 is extremely important to me as a grandparent, citizen and prosecutor. I am presently serving my 13th year as Gallatin County Attorney. As chair of the Sex Offender Subcommittee of the Governor's Advisory Council on Corrections and Criminal Justice Policy I had the opportunity to participate in the drafting of the legislation. I have discussed the legislation with Rep. Denny and apologize to him for my absence from your hearing.

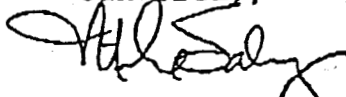
From the experts and my experiences I have learned that sex offenders are not cured. While their behavior may be controlled through treatment, there are many who may require life time incarceration or supervision.

In 1987 I prosecuted a 53 year old defendant for incest. 11 years earlier he began having sexual intercourse with his 10 year old daughter. At 21 years old she had the courage to tell someone about her father's repulsive sexual conduct. He pled guilty and was sentenced to 10 years in prison. At his sentencing he told the judge that his young daughter's participation was a 50/50 situation. He stated that she was at no time disgusted, humiliated nor unwilling to participate. The defendant would not participate in the sexual offender treatment program at prison, served his time and was discharged on July 24, 1992. This man came out of the prison with the same revolting attitude and beliefs that he had when he was caught. I submit that no community is safe from the exploitive and abusive conduct of this man or any person like him. Life time supervision should have been an option for the sentencing of this defendant.

The protection of the public also requires that sex offenders be mandated to register for life. The rule should be life, not 10 years. Failure to register should be punished with severity, not merely a slap on the hand. We also need a process for community notification.

I encourage your support and passage of House Bill 157.

Sincerely,



Mike Salvagni
County Attorney

Mr. Chairman, Members of the Committee:
I am Mike Ferriter, Chief of the Community Corrections Bureau. I am here to support HB 157. As the Bureau Chief of Community Corrections I am responsible for the community supervision of offenders placed on probation and parole.

One of the main components of the Probation and Parole Bureau's mission is to promote public safety through quality supervision. The life time supervision of sex offenders truly falls within the perimeters of our mission. The Probation and Parole Bureau has a very well-trained and professional staff, and is prepared to offer the public quality and long-term supervision of sex offenders, if and when they are placed in the community.

I urge your support of HB 157, as it is the responsible thing to do for the protection of our communities, as well as to aid sex offenders in their attempts to maintain sex offender treatment.

Thank you.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

EXHIBIT _____
DATE 2/3/95
HB 157

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 3, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. I am here today to voice opposition to HB 157.

First, each of the proposed amendments sets up confusing dual schemes for punishment for sex offenses: either a term of years in Montana State Prison or a life commitment to the Department of Corrections and Human Services. No standards are provided to give rational guidance to the court. This will surely lead to arbitrary decisions. Due process and equal protection concerns are overwhelming.

Second, as we voiced concern in the hearing on HB 161, the proposed revision to 45-5-625(1)(e) which would punish the knowing possession of "any visual or print medium in which children are engaged in sexual conduct, actual or simulated" seems to me to clearly violate the First Amendment. This statute would not only make possession of Romeo and Juliet a felony, but would also make teaching courses in juvenile delinquency or sex education risky. Such a law also has obvious commerce clause implications in that virtually all such material travels in interstate commerce and our law, if passed, may impose an unlawful burden. Concomitant with this are supremacy clause problems.

Third, lifetime registration of sexual offenders, even those who have served their full sentence, may violate Montana's constitution. Article II, Sec. 22 provides a prohibition against cruel and unusual punishment. Section 28 provides for the full restoration of rights upon termination of state supervision., i.e., termination of one's sentence.

Finally, the dissemination of information to the public is repugnant to me. Article II, Section 4, Montana Constitution expressly provides: "the dignity of the human being is inviolable." making this type of information available to the press and vigilante type groups simply does not square with that principle. Furthermore, Article II, Section 10 guarantees the right of individual privacy which cannot be violated absent a showing of a compelling state interest. The proposed legislation does not even begin to comport with that.

This bill is essentially a lawyer's relief act. If the legislature wants to provide endless opportunity for litigation with its horrible financial cost to the state, this bill will do it.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.3.95

BILL NO. HB 157

SPONSOR(S) Rep. Denny

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Denny	HDG3	✓	
John Connor	MT County Attys Dept of Justice	✓	
Jane Christman		✓	
Derek Van Luchene		✓	
Ron Silvers	LPC Private Practice	✓	
Sandy Neaton	MT State Prison Therapist		
Scott Chichan	ACLU MT		✓
John G Thomas	BOP	✓	
Dave Olsen	Dept of Corrections	✓	
Becky Malensek		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

{Tape: 1; Side: A

REP. DANIEL MC GEE told the committee that the decision of the subcommittee which had met was to not combine HBs 157 and 214 and REP. DEB KOTTEL elaborated on the reasons. They further explained the content of each of the bills.

EXECUTIVE ACTION ON HB 157

Motion: REP. SHIELL ANDERSON MOVED HB 157 DO PASS.

Motion: REP. MC GEE MOVED TO AMEND HB 157. EXHIBIT 1

Discussion: REP. KOTTEL explained the amendments.

REP. BRAD MOLNAR asked to segregate out the first amendment which would strike 45-5-505, MCA.

REP. KOTTEL explained the reasons for this amendment were to take victimless crimes out of the lifetime registration requirement.

REP. MOLNAR and REP. KOTTEL continued to debate the first amendment.

John MacMaster asked for clarification on amendments 2 - 6 by striking the word, "sexual," and other areas in the bill where it needed to be struck for consistency. There was additional committee discussion concerning the amendments.

Motion: REP. KOTTEL MADE A SUBSTITUTE MOTION TO CONSIDER AMENDMENTS 2 - 13 WITH THE UNDERSTANDING THAT LANGUAGE AND TECHNICAL CHANGES COULD BE MADE TO MAKE THE TWO BILLS SYNONYMOUS.

Discussion: Mr. MacMaster questioned taking "sexual" out if the intent of the bill was to have only sexual offenders registered and REP. KOTTEL explained the thinking behind it.

REP. MC GEE asked what happens when parallel bills are passed and Mr. MacMaster explained the codification and merging process. He explained how and why he did not believe it would work on these two bills if one did not pass. He recommended writing a coordinating clause in one of the bills. He felt it was dangerous to count on them both passing and then to merge them.

Mr. MacMaster said this bill either should cover sexual offenders only or cover all offenders. He confirmed that HB 214 would cover both violent and sex offenders. He said that if they removed "sexual" out of this bill and the other bill didn't pass, this would cover all offenders. If this bill did not pass, the other would cover sexual and violent offenders. If both passed, it wouldn't matter if the other bill said sexual as well as violent and this one did also.

Motion/Vote: REP. KOTTEL MADE A SUBSTITUTE MOTION TO MOVE AMENDMENTS 7, 8, 11 AND 12 FOR HB 157. The motion carried unanimously.

Motion: REP. KOTTEL MOVED AMENDMENTS 2, 3, 4, 5, 6, 9, 10 AND 13 CONCEPTUALLY BE CHANGED IN ANY WAY THAT WOULD COORDINATE HB 157 WITH THE LANGUAGE OF HB 214 WITH DIRECTIONS FOR A CODIFICATION INSTRUCTION.

Motion: REP. MC GEE MADE A SUBSTITUTE MOTION TO STRIKE THE WORD, "SEXUAL," WHERE IT APPEARS IN THE BILL BEFORE "OFFENDER."

Discussion: REP. WILLIAM BOHARSKI offered the suggestion to just add all sponsors to one bill, make one bill and clean it up and pass it out of the committee.

REP. KOTTEL had no objection to doing that but expressed the thinking of the Department of Corrections and Human Services (DCHS) in handling it this way. It was a political decision to sever the two bills in case there were objections to lifetime registration of violent offenders. She thought they should be merged because she felt each one was just as strong as the other.

REP. BOHARSKI felt both would pass and one would be easier to deal with.

REP. MOLNAR felt they should pass both bills unamended thinking they would be codified if they both passed. One bill was very narrow in scope. The one which was broad might be challenged by a judge and he wanted each to go on their own merit.

REP. MC GEE recounted the subcommittee discussion and the decision to keep two bills.

REP. BOHARSKI asked what the worry was about the bills not passing or being challenged.

Mr. MacMaster described the problems with the bills as they stood and recommended the amendments necessary to solve those problems. He offered further options for handling the two bills during the process.

REP. MC GEE withdrew his substitute amendment.

REP. KOTTEL withdrew her amendment.

Motion/Vote: REP. KOTTEL MOVED TO STRIKE 45-5-505, MCA. The motion failed 6 - 13, by roll call vote.

Motion: REP. KOTTEL MOVED HB 157 DO PASS AS AMENDED. The motion carried unanimously.

Discussion: REP. BOHARSKI said that, in speaking to some judges, he had determined that they wanted to make sure that the court had those offenders and since there is no cure for them, to change all of the sentences.

REP. KOTTEL said these were not only lifetime registrations but also lifetime sentences and pointed out the portions which answered his concern.

REP. BOHARSKI described his concern in more detail and asked how the process would work to alleviate those concerns and the sponsor clarified that process. They continued to discuss the wording of the bill and clarified its intent and result.

Mr. MacMaster asked if the sponsor's intent in amendments 11 and 12, dealing with the penalty provision, was to make the bills read the same. If that was the intent, there were conflicts. The sponsor desired to deal with that in HB 214 amendments.

EXECUTIVE ACTION ON HB 214

Motion: REP. KOTTEL MOVED HB 214 DO PASS.

Motion: REP. KOTTEL MOVED HB 214 BE AMENDED ACCORDING TO ITEMS 4 THROUGH 9 OF EXHIBIT 2.

Discussion: REP. KOTTEL described the reason for these amendments to deal with the immunity provision to make it parallel to HB 157.

Vote: The motion carried unanimously.

Motion: REP. KOTTEL MOVED TO AMEND HB 214, ITEMS 1 THROUGH 3 OF EXHIBIT 2.

Discussion: REP. KOTTEL explained the amendments.

REP. SHIELL ANDERSON asked why the new language was being struck on lines 4 through 6 on page 2.

REP. KOTTEL said it was designed to match HB 157 in saying that police officers are not allowed on their own discretion to release the information. The amendment would make this bill parallel to HB 157.

REP. MC GEE pointed out that page 5, line 15 included a reference to 45-5-505, MCA which caused the bills to conflict.

Motion/Vote: REP. KOTTEL MADE A SUBSTITUTE MOTION TO MOVE AMENDMENTS 1 THROUGH 3 AND ON PAGE 5, LINE 15 TO INCLUDE 45-5-505, MCA. The motion carried unanimously.



HOUSE STANDING COMMITTEE REPORT

February 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 157 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 6, line 30 through line 1 of page 7.

Strike: "the court" on line 30 of page 6 through end of line 1 of page 7.

Insert: "a district court"

2. Page 7, lines 3 and 4.

Strike: "Within" on line 3 through "convicted" on line 4

Insert: "The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the sexual offender was convicted if the victim's address is reasonably available"

3. Page 7, line 5.

Strike: "or victims"

4. Page 7, line 13.

Strike: "less than 90 days or"

5. Page 7, line 14.

Strike: "\$5,000"

Insert: "\$10,000"

-END-

Committee Vote:

Yes 19, No 0.

5361353SC.HBK

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/11/95 BILL NO. HB 157 NUMBER Kattel Amendment #2
 MOTION: To Strike 95-5-505

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

AMENDMENTS TO HOUSE BILL 157 AS INTRODUCED

1. Page 6, line 13.
Strike: "45-5-505,"
2. Page 6, line 30.
Following: "sexual offense, the"
Strike: "sexual"
3. Page 6, line 30.
Following: "sentenced the"
Strike: "sexual"
4. Page 7, line 1.
Following: "which the"
Strike: "sexual"
5. Page 7, line 2.
Following: "relieving the"
Strike: "sexual"
6. Page 7, line 3.
Following: "filed, the"
Strike: "sexual"
7. Page 7, line 3.
Strike: "Within 3 days after the petition is filed, the sexual offender shall mail a copy of the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender was convicted."
8. Page 7, line 3.
Following: line 3
Insert: "The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the sexual offender was convicted if the victim's address is reasonably available."
9. Page 7, line 4.
Following: "which the"
Strike: "sexual"

10. Page 7, line 7.
Following: "(a) the"
Strike: "sexual"

11. Page 7, line 13.
Strike: "less than 90 days or"

12. Page 7, line 14.
Strike: "\$5,000"
Insert: "\$10,000"

13. Page 7, line 19.
Strike: "sexual"

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 8, 1995,
at 9:00 AM

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 157, HB 214, HB 347, HB 253
Executive Action: HRJ 14, HB 232, HB 253, HB 347

HEARING ON HB 214 & HB 157

Opening Statement by Sponsor:

REPRESENTATIVE DEBORAH KOTTEL, House District 45, Great Falls, presented HB 214. This legislative session has had a lot of focus on the issue of crime. The three areas of focus are: victim protection, rehabilitation/prevention and deterrents/punishment. Deterrents and punishment is not just keeping people in prison. Deterrents deal with what to do with the individual once they are out of prison and on the street. How will the people of Montana be protected? HB 214 deals with

lifetime registration of violent offenders. Presently in Montana we have registration of sex offenders for 10 years. The lifetime registration would require an individual within 14 days of moving into a county or upon release from a correctional institution to report to their local sheriff and fill out a registration card. Since they have already been convicted of a violent crime, as set out in HB 214, their records, fingerprints, and other criminal identifying information would then be sent to the local sheriff. If the person fails to register, that would be a felony. Why is this important? Statistics show that 60% of violent offenders reoffend. The information from the attorney general's office is shocking. They are able to solve less than 10% of the arson cases, less than 40% of the robbery cases, etc. Lifetime registration lets the person who has already been convicted of a violent crime know and understand that law enforcement knows where they are and makes them accountable for their actions. What this bill does not do is label their door or allow general public dissemination of that information so that if people are truly interested in rehabilitation, they can be about their business of rehabilitation and become good citizens in the community. This bill allows any violent offender to come into a court proceeding after 10 years and petition the judge to come off the lifetime registration. If they have proven themselves and there has been no further violent crimes, they will be able to come off the lifetime registration. The states around us have registration of violent and sex offenders. Out-of-state offenders can escape the detection of law enforcement agencies. If people themselves do not have impulse control and cannot set their own boundaries to live in society, then we as a society must set those boundaries for them.

REPRESENTATIVE MATT DENNY, House District 63, Missoula, presented HB 157 which is an act to allow life sentencing and lifetime registration and supervision of sex offenders. This bill was drafted at the request of the Governor's Council on Corrections and Criminal Justice Policy. This Council was composed of people from around Montana who are involved in the criminal justice and corrections system including judges, sheriffs, police officers, probation officers and prison officials. It was drafted to address the growing public concern about the sex offender in our society while addressing the goal of rehabilitating offenders and finding solutions which will ensure a safer society for all Montanans. This bill has two principal provisions: one provides for lifetime sentencing and the other for lifetime registration for sex offenders. The life sentence is not subject to reduction and is a true lifetime commitment to the Department's control and supervision. Experts who deal with sex offenders believe that a sex offender, like an alcoholic, is never cured. Rather their disease, like alcoholism, is able to be controlled. This bill will address the need to protect society while providing for the rehabilitation of the offender through lifetime supervision and registration. The bill provides an alternative for district court sentencing a convicted sex offender. In addition to the current prison terms which are provided by the criminal statutes,

•this bill permits the district court to sentence the sex offender to the custody of the Department of Corrections and Human Services for the remainder of his or her life. The offender will be placed in the correction system based upon the offense, previous record, behavior and progress in the treatment programs. For the vast majority of sex offenders, this means placement in Montana State Prison while the offender undergoes intensive sex offender treatment. Following completion of that program when it is determined the offender is ready, the offender may be placed in a community based prerelease center under continuing treatment. Following this, the offender may be placed under supervision of probation and parole while continuing to undergo treatment. If there is any reason to believe that the offender may reoffend or that he is not continuing to participate in his treatment, he can be removed from society and returned to MSP until his placement back in the community can be accomplished with safety to the public. This provides the offender with a strong incentive to remain in treatment and to continue to address his disease throughout the remainder of his life. In conjunction with lifetime supervision of offenders, this bill also increases the time during which any sex offender must register with local law enforcement authorities in the town in which the offender resides. This bill requires that sex offenders register for the remainder of their life rather than the 10 years which is currently provided in statute. It also provides a means by which a sex offender who is successfully rehabilitated himself, may ask the court to be relieved from the duty to register. The bill also provides that while the names of registered sex offenders may be public, other information about the offender is confidential criminal justice information. Personal information including the residence of the offender would not be generally available to the public, but is available to local and state law enforcement personnel. This protects the privacy of the offender and relieves the offender of stigma which may adversely impact his or her treatment. To ensure that known and dangerous sex offenders are not released from prison without public notification, the bill requires the Department to petition the district court for authorization to release whatever information is necessary for public protection prior to the actual release of the offender. This provision addresses those offenders who have received a prison term of so many years and who have failed to address their disease through treatment. The fiscal note states the costs at approximately \$225,000.

Proponents' Testimony:

Rick Day, Director of the Department of Corrections and Human Services, spoke in favor of the HB 157. Tougher criminal penalties, improved investigative information and enhanced public safety describes HB 157. It is not just another bill in a long line of get tough legislation. It is intended to provide solutions to the public safety imposed by criminal sex offenders. HB 157 is designed around the acknowledgement that sex offenders are not cured but must be involved in treatment and supervision

for the rest of their lives. For some that fail to accept and participate in treatment designed to reduce the risk of reoffense, this legislation will mean life in prison. For others, it may mean a return to a productive life in a community under supervision and continued treatment but allows for a return to prison if the offender fails to comply. It also imposes the requirement of lifetime registration of sex offenders. This legislation was drafted to identify the registerer as criminal justice information. The names of the offenders would be public information. This also provides a method through the district court to disclose registration information to the public. Although there continues to be much discussion around the issue of public disclosure, recent court decisions in New Jersey tend to indicate the method offered in this legislation is the most acceptable approach. Evidently a similar law in New Jersey called Megans law, included a broader public disclosure administered by the attorney general. Recent court decisions have overturned that section primarily based on the denial of due process and acknowledgement that the courts need to be involved in a public disclosure process. HB 157 already incorporates the district courts in this process. The executive budget included expanded prison and community treatment funds and additional parole and probation officers to provide the supervision required to back this legislation. At this point, the portion of the funds for expanded treatment at Montana State Prison, have been approved but the community side has not and that is an amendment at a House Appropriations Hearing this morning. HB 157 represents a thoughtful and aggressive solution designed to combat the increase in sexual crimes.

John Connor, Attorney General's Office, Montana County Attorneys Association, Member of the Governor's Advisory Council on Corrections and Correction Policy, spoke in support of HB 157 and HB 214. One of the concerns about these bills in the hearing in the House was that they are overly onerous where the rights of the defendants are concerned. This bill contains protections for the defendant by giving the court an alternative situation. The court can sentence the defendant under existing statutes with respect to time or, under this bill, has the alternative if the situation warrants it to require a lifetime supervision. The intent of that provision is not to put the defendant in prison, although that is an option, but to maintain a supervision over that person for the rest of the offender's life so that there is some adequate system of monitoring. Statistics indicate that about 1/4 of all offenders who leave prison do so without supervision and approximately 1/3 of offenders who are in prison for sex offenses, are not unwilling to accept treatment. This provides a means of tracking and monitoring to enforce constraints which are necessary to keep these people from reoffending. There are protections in the bill with respect to allowing the defendant to petition the court for this sentence to be set aside if, in fact, he can demonstrate to the court's satisfaction that he has, over a period of ten years, changed his conduct so that he doesn't present a threat to reoffend. The

- House made some changes in HB 214 with respect to the dissemination of information which made it consistent with HB 157. They believe those changes were excellent decisions.

John Strandell, Undersheriff of Cascade County, Member of the Governor's Council on Corrections and Criminal Justice, Board Member of the Montana Sheriffs and Peace Officers Association, stated the sex offender's committee was responsible to consider more stringent and progressive responses to sex offenders throughout Montana. They were formed to consider lifetime supervision of sex offenders and they also discussed other issues such as DNA registration, lifetime registration of sex offenders, and public disclosure of the offender's identity to the public. During discussion and testimony provided to the committee, it became apparent that there is no cure to the problem that sex offenders have. Treatment can control their behavior if properly monitored. Lifetime sentencing and registration will be effective in controlling these offenders when they are released from prison. Statistics show that the greatest risk for reoffense is within the first six months. But the second time frame most common for reoffense happens 15 to 20 years later. From a law enforcement point of view, it is very disturbing to see sex offenders come back to the community from prison knowing that the high risk for reoffense is there. One of every four released have served their sentence issued by the court and are currently not on supervision of any type. Many offenders receive no treatment in prison because of noncompliance by the offender. Lifetime registration and sentencing control would keep the offender within the community and if conditions are violated, any offender can be reincarcerated. This legislation also provides for proper dissemination of information on sex offenders to the general public after a petition is filed with the district court and the court orders the information released. This legislation provides effective and progressive change in controlling sex offenders in our state.

Jane Christman appeared in support of HB 157 and 214. Almost eight years ago her son, Ryan Van Luchene, was murdered by Robert Hornbach, who is a repeat sex offender. In July of 1987 she moved to Libby. She was a newly single parent. She had the opportunity to work in either Spokane or Libby. She decided that Libby would be a safe place for her children. She found a home in Libby and so did Robert Hornbach, who was originally from that area. He had been released from Montana State Prison about ninety days earlier. He had served a three year term for raping a little boy about 100 yards from the house which she bought. He had a five year sentence, but was out in three years. No one told her he was there. Maybe the parents should know these things before tragedies happen. Ryan's first love was fishing. Their land had a stream through it. She registered Ryan for school on Friday. It would have been a wonderful place for someone to let her know that there was a dangerous man in the community. No one told her. Ryan was murdered on Monday, he never did start second grade. She called her family in Kalispell

when Ryan was missing. Someone working within the penal institution called her brother and said he knew who was out of prison and in Libby. He knew. They knew they were not looking for an alive little boy because Robert Hornbach stated in prison that if he ever did it again, he would leave no witnesses.

Derek Van Luchene spoke in support of HB 214 and HB 157 not only as a law enforcement officer, but as a victim of violent crime. On August 31, 1987, his family learned that his eight year old brother was murdered by Robert Hornbach. Mr. Hornbach was a once convicted child molester who had been set free to go anywhere he wanted without having to report to anyone about his whereabouts and that day his brother happened to run into Mr. Hornbach. He was in the wrong place at the wrong time and fell victim to this animal. Why didn't he have to report his whereabouts? Why wasn't he kept track of? Why wasn't the community warned? We need laws to keep track of these sex offenders, not just while they are on conditions of parole but for the rest of their lives. The community needs to know where they are. His family has worked very hard to deal with the loss of his brother. He is presently working as a police officer. He has taken the anger and hurt that he feels and turned it into something positive. He works very hard to make his community a safe place to live. He works in the schools and teaches the children how to stay safe and avoid strangers. All he has left of his brother are memories.

Sandy Heaton, Therapist from Montana State Prison, spoke in support of HB 157. She has worked with offenders for 16 years. Lifetime supervision with treatment and monitoring them in the community is the responsible way to deal with the offenders. Offenders need a chance to be productive members of the community and this bill is a good balance to do both. It will help to track and monitor them while keeping the community safer. It will also allow those who want to change their lives to do so.

Christine Kaufman, Director of Montana Human Rights Network, spoke in support of both bills by presenting her written testimony, EXHIBIT 1.

Sandra Hale, PRIDE, presented her written testimony, EXHIBIT 2.

Arlette Randash, Eagle Forum, presented her written testimony in support of HB 157, EXHIBIT 3.

Opponents' Testimony:

Scott Crichton, ACLU, presented his written testimony in opposition to HB 214 and HB 157, EXHIBIT 4. He has a lot of personal respect for the testimony this morning, for the anguish the victims have been through in their lives and he does not defend sex offenders. He spoke in support of preserving the constitutional protections for all of its citizens by advising

the committee about a couple of his concerns which may make this bill more constitutionally worthy. He read a newsclipping from the New York Times, January 10, ten days after Megan's law went into effect. "Two men who knew that a recently paroled sex offender was living here because of the community notification provision in Megan's law, have been charged with assault in a case the prosecutors are calling the first instance of vigilantism under the new law. The two men, a father and son, broke into a house where the parolee, Michael Goof, 25, was asleep on the living floor at 2:45 in the morning, Sunday. Warren County authorities said several people were staying at the house and one of the intruders began beating a man he mistook for Mr. Goof. All of a sudden a big guy, says Mrs. Keller, one of the people asleep at the house, in a black ski mask came in the door and said he was looking for the child molester. Someone called the police who arrived with minutes and subdued the attacker before anyone was seriously hurt." What happened is they attacked an innocent person based on information that had been released on the supposed whereabouts of this individual. If there was some guarantee that there would be ample opportunity to make sure that people who are being tracked are also being treated, this would be more palatable. He thanked SENATOR VAN VALKENBURG for introducing a bill which he introduced which allowed the people in treatment at MSP not to be held accountable for crimes they admitted to in their treatment. In Billings a sex offender would not have been convicted if that immunity had been in place. There is a problem either way this is looked at. By allowing a person to be prosecuted for what is said in therapy, a lot of inmates will refuse treatment entirely. That is self defeating. Sex offenders are likely to never be rehabilitated if in the process of their therapy, they are likely to be recharged and resentenced on additional crimes.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HOLDEN asked REPRESENTATIVE DENNY why the House left the homosexuality reference in the bill. REPRESENTATIVE DENNY commented the amendment to the bill was submitted to the committee and he concurred with that amendment, however, the opinion of the committee was that because that particular statute included offenses of two different natures, bestiality and homosexual conduct, they did not want to strike that from the law.

SENATOR HOLDEN asked how the public would find out where a offender lives.

REPRESENTATIVE DENNY commented in Section 7 (1) it states that the offender must register for the remainder of their life. After ten years, if they have not reoffended, they may petition the district court to be released from the requirement to register.

SENATOR HOLDEN asked how the public, in a practical sense, would find out that a sexual offender is in the community.

REPRESENTATIVE DENNY commented there are two different ways to find out. Under the normal registration, that person's name would be included in a registry available to the public. This would not give details of the crime or where the person lives. Perhaps a law enforcement officer would inform someone who is interacting with this person, that his name is on the list. The Department can petition a district court to release all of the information to the public. That information would be available at the county courthouse or through law enforcement.

Mr. Ohler commented on the physical location of the sexual offender register. The register is currently maintained by the Department of Corrections in Helena. Local law enforcement would be advised through the registration process that an individual has entered their community and he is a registered sex offender. They would have the information but not the register.

SENATOR HOLDEN asked how he personally would find out who is on the register.

Mr. Ohler commented that HB 157 states that the name of a registered sexual offender is public criminal justice information. That means that information is available to the public and can be disseminated to the public. If you wanted to know whether John Doe was a registered sexual offender, you could contact the Department of Corrections.

SENATOR HALLIGAN stated that if the Department believed the release of information is necessary for public protection, the Department shall petition the district court. The Department may not believe that the public needs the protection, but the deputy county attorney, working with the victims, may believe that the public would be served by a district court petition disseminating the information. There is no opportunity for the county attorney to petition the district court in order to have the information. Was this discussed in the House hearing?

Mr. Ohler stated it is not addressed in the bill. By stating that the register is confidential criminal justice information except for the name, the provisions of the Criminal Justice Information Act apply to this information. There are provisions for a county attorney to ask the district court to release of confidential criminal justice information upon a showing of public need or safety. Section 9 (2) addresses the situation where an individual is sentenced to a term of imprisonment at Montana State Prison and refuses to enter into treatment and the prison believes there is a risk to the community to have an untreated sex offender released because of the great possibility that he will reoffend. The prison then would have an opportunity to go to district court and seek some release of information so that the public can be notified.

SENATOR ESTRADA asked if the family of the victim would be notified that the offender has been released and is going back to the community?

Mr. Ohler stated that was not provided for in this bill. The crime victim's bill would deal with notification. The sexual register is available to local law enforcement personnel. Criminal justice agencies have access to that information. When a sex offender enters a community he is required to report to the local law enforcement and register with them. That information is then transmitted to the Department of Corrections where the register is maintained. HB 157 is changing the current law from 10 years registration to lifetime registration of sex offenders.

SENATOR JABS stated the families will not know if a sex offender lives in their neighborhood.

Mr. Ohler stated that is a two edge sword. There is a possibility of going too far with releasing information concerning sex offenders. There is a fine line as to how much information can be disseminated to the general public without some sort of court proceeding. He spoke with the attorney general from the State of New Jersey and discussed the court opinions that have been handed down both in federal and New Jersey Superior Court concerning New Jersey's community notification law which has been struck down as being unconstitutional. The problem with the New Jersey statute was that their law permitted the attorney general to draft some guidelines as to what kind of information could be released to the community and based upon those guidelines a local law enforcement person could go to the newspaper and say there is a sex offender living in the community and give the address. The federal and New Jersey State Courts found that to be a problem because there was no due process. It was found to be punitive and said there would have to be a court proceeding before information was released because it is very damaging to the sex offenders who do have some rights of privacy. HB 157 limits the release of the information to the name of the offender. An example would be, local law enforcement knows John Doe is a sex offender and he is hanging out where young people congregate. The local law enforcement can go to the mother and warn her that a registered sex offender is communicating with her child. He cannot give an address or place of work. This would require some court proceeding.

SENATOR BAER stated that victims and their family should not meet a sex offender face to face, not knowing that he has been released from prison and is back in town.

REPRESENTATIVE DENNY commented that HB 69, which has passed both chambers, requires notification of the victims of any change in status of a particular perpetrator. This bill includes that at such time that the offender petitions a district court to be

released from their obligation to register, the victim will be informed within three days by the county attorney.

REPRESENTATIVE KOTTEL commented that in other jurisdictions, if a convicted sex offender who has served his time, is hanging around a school yard, law enforcement can run a check to determine if this is a sex or violent offender. Registration allows the police, if the person has not registered, to remove the person out of the dangerous situation and hold them pending an investigation because they then could charge him with the crime of failure to register. This is a tool which local law enforcement can use to help prevent the crimes from taking place.

SENATOR NELSON asked about the retroactive applicability which was removed from the bill.

REPRESENTATIVE KOTTEL stated that a Supreme Court provision struck down a statute which had an ex post facto provision on it because when the people were previously convicted, lifetime registration was not part of their sentence. She did not like removing this from her bill, but understands the constitutionality of the situation.

SENATOR BARTLETT asked about the status of the funding request for the fiscal note.

REPRESENTATIVE KOTTEL stated that it is her understanding that the funds are available. It is only \$21,000 in the first year and after that a \$1,000 for all succeeding years.

SENATOR BARTLETT stated HB 157 includes as one of the sexual offenses the crime of incest but qualifies that by specifying that that does not include unless the act occurred between two consenting persons 16 years of age or older. The statute on incest says that consent may be raised as a defense with or upon a stepson or stepdaughter, but is ineffective if the victim is less than 18 years old. The incest statute says "18", this bill says "16".

Mr. Ohler stated that Section 6 was discussed by the Governor's Council as to whether or not to eliminate that parentheses from that particular section and the decision was to leave it in.

SENATOR BARTLETT asked if they consciously chose the 16 years of age as a part of that parentheses.

Mr. Ohler commented the discussion was to leave the current statute and the current definition the way it is.

SENATOR BARTLETT stated the issue was raised that if a person under the lifetime registration requirement petitions a court that the court petition process would be a public process. Is it possible to close that hearing to the public?

Mr. Ohler stated he did not recall any discussions as to privatizing the particular hearings. There was discussion as to the appropriate venue for bringing a petition and the Council believed that the proper venue to bring a petition would be in the county in which the offense occurred, presumably that being the same county that the victim and the victim's family would reside in.

SENATOR BARTLETT stated that the Department was concerned about being able to release information in the case of a person from a state prison who had refused treatment. That section specifically states that the Department can seek permission to release the information before the person is released from a state prison. She asked what the word "state prison" covered?

Mr. Ohler stated that prerelease centers, the regional prisons, and Montana State Prison are all administratively considered state prisons or extensions of the state prison and people who reside in any of those facilities are considered inmates so that should not be a problem.

SENATOR BARTLETT asked REPRESENTATIVE DENNY, referring to the testimony regarding deviant sexual conduct and the definition of that term includes "bestiality", if the act of incest occurred between two consenting persons 16 years of age or older, would that kind of parenthetical statement after 45-5-505, expressly excluding consenting acts by adults.

REPRESENTATIVE DENNY commented his only concern might be that they would lose the entire bill when it went back to the House.

Closing by Sponsor:

REPRESENTATIVE KOTTEL stated she put HB 157 and HB 214 together because in her mind sex offenses have very little to do with sex and everything to do with violence. Eight months ago a baby was admitted to Montana Deaconess Hospital. The baby was six months old. The baby had her esophagus torn open and had oral gonorrhea from what a man did to that child. Ryan was not just brutally sodomized. He was killed and left for dead in a cemetery in Libby. Why do people commit violent crimes against other human beings? She believes it is because they have a lack of respect for the victim as well as society's laws. They certainly have the inability to control their impulses and often they have a chemical dependency problem. Those four elements are true for sex offenses, deliberate homicide, and aggravated assault. What will HB 214 do? It will create a registry to assist law enforcement in investigations. It establishes legal grounds to hold offenders in suspicious circumstances. It deters violent and sex offenders from committing new offenses. It offers citizens the availability of important information so that they can protect themselves.

REPRESENTATIVE DENNY stated that if HB 157 is passed, we should not fool ourselves for a minute that people will not still offend and that victims will not be preyed upon. Hopefully, we will be able to protect more people from repeat offenders and make our system more effective at rehabilitating and controlling offenders. During the House hearing they heard testimony that a number of currently convicted sex offenders at the State Prison are in favor of this legislation because they need to have boundaries. Those who want to be rehabilitated would like to know that society is watching them and they will be held accountable for their actions in the future.

HEARING ON HB 253

Opening Statement by Sponsor:

REPRESENTATIVE BEVERLY BARNHART, House District 29, Bozeman, presented HB 253 which would allow judges in a dissolution action, to send parents to a class which will teach them the affects of divorce on children. Children will be affected differently at different ages. Some judges are already doing this. There is plenty of material available. The judge would tell all people who come before him for a divorce, that this class is available and he may send some of them if he believes they need this class. At the end of the class the two parents enter into a contract and decide things such as what should be done for birthdays, Christmas, etc., so their child's life is more stabilized. She passed out two handouts, EXHIBITS 5 and 6.

Proponents' Testimony:

Pat Melby, State Bar of Montana, stated their support of HB 253. A small part of his practice is family law. Anyone who is involved in that area runs into situations where the parties to a divorce, in a very emotional state, tend to use the children as a way to punish the other party. A judge should be able to order these parties to take some classes and educate themselves on what those kinds of activities can do to children.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE BARNHART offered no further comments on closing.

EXECUTIVE ACTION ON HB 253

Motion/Vote: SENATOR HALLIGAN MOVED HB 253 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote.

DATE _____

3-8/95

SEN:1995
wp.rollcall.man

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. _____
DATE 3/8/95
HB 157

TESTIMONY IN SUPPORT OF HB 157 WITH AMENDMENTS

OFFERED BY: CHRISTINE KAUFMANN, HUMAN RIGHTS NETWORK

The Montana Human Rights Network is a private non-profit corporation, consisting of a statewide office and 12 local human rights groups. The staff answers to a board of directors from across the state and about 3,500 Montanans who support our mission with their dollars and their activism. We are not a part of the Human Rights Commission, the office of state government charged with enforcement of anti-discrimination laws.

Our mission is to help communities counter bigotry, hatred, and intolerance across Montana, no matter who the targets are. We do this by helping local folks speak out against bigotry and by celebrating the diversity among us. In keeping with our mission we support equal protection under the law for lesbians and gay men.

We can fully support HB 157 if it is amended on page 6, line 16 to remove consensual sexual activity made criminal in 45-5-505. My comments will be confined to the amendment.

You should be aware that 45-5-505 is currently being challenged in district court in Helena as an infringement of the constitutionally guaranteed rights to privacy, dignity, and equal protection under the law. The challenge will likely come before the Supreme Court prior to the next legislature. In defense of the law, the attorney general has argued that gay men and lesbians have nothing to fear because the law has been on the books in one form or another since territorial times and has never been enforced.

The district court judge has denied the State's motion to dismiss the lawsuit for lack of standing. In doing so, he pointed out that the Montana Legislature, in its refusal to repeal the law and it's action to amend it, "has reinforced the idea that this is a viable and enforceable statute...The Court will not assume that law enforcement agencies will perpetually ignore a statute when our legislature continues to support its validity."

By creating new law referencing 45-5-505, particularly one which clearly discriminates against lesbians and gay men by denying their constitutional rights to privacy and dignity, the legislature will again send the message to the court that 45-5-505 is valid and should be enforced. If you leave the reference to 45-5-505 in the bill, you will make it more difficult for the State to argue its case, and easier for the court to rule with the plaintiffs.

Setting aside the impact on the court case, the real reason to amend the bill is because consenting sexual activity, whether you approve of it or not, simply does not belong in this bill. This bill is about registration of criminals who threaten the safety of our communities. When two adults freely consent to sexual activity, there are no victims. We urge you to support the bill as amended.



DATE

3/8/95

FILE NO.

HB 157

P.O. Box 775 • Helena, MT 59624 • (406) 442-9322

**TO: Senator Crippen, Chair; Senate Judiciary Committee
Members of the Committee**

Re: Opposition to Parts of HB 157

Date: March 8, 1995

I am Sandra Hale, Executive Director of PRIDE!, Montana's statewide organization for lesbians, gay men, and bisexuals. Our mission is to secure the constitutional rights for this community and to build Montana communities based on respect, fairness, and equality.

PRIDE! strongly opposes the inclusion of Montana Code Annotated 45-5-505 in the list of sexual offenses under section 6 of this bill. This statute makes felons of adults of the same sex engaging in consensual sexual intercourse in the privacy of their own homes. The statute is presently being challenged in the Montana court system as unconstitutional, in the lawsuit *Gryczan vs State of Montana*. The plaintiffs maintain that MCA 45-5-505 violates Montana citizens' right to privacy, equal protection under the law, and human dignity. The inclusion of it in this bill further reinforces the creation of state sanctioned discrimination against a segment of Montana citizens based on an intrinsic characteristic of their very being.

Consistent with the belief that self-identified lesbians, gay men, and bisexuals deserve the same basic rights as other Montana citizens, that a homosexual sexual orientation and its enactment in every day life in the privacy of homes between consenting adults is not a crime against nature or the state - but rather part of who we are, PRIDE! urges the Committee to strike this section from HB157.

March 8, 1995

HB 157
Senate Judiciary
Arlette Randash / Eagle Forum

We rise in support of HB 157 for compelling reasons. Some of the most heart rendering testimony has been given during this legislative session concerning sexual offenders. I have shared with you newspapers articles of sexual offender cases from across Montana collected in the past several months because of the obscenity issue. For each of those there are probably dozens that have never been reported.

The Montana Board of Crime Control has kept statistics of sex offenses since 1980. That year there were 406 sex offense convictions and 166 forcible rapes. By 1983 sex offense convictions had jumped to 1070, in 1991 to 1438, dropping in 1993 to 1183 and 179 forcible rapes. How many of those sex offenses were committed by repeat sex offenders? How many could have been prevented if the sex offenders had been registered with the police department and the public had been notified? How many of those victims offended in 1983 are the perpetrators in 1995 *because they were victimized?*

In June of 1994 there was a symposium made up of the attorney general, of state law enforcement officials, and juvenile sex offender experts in Great Falls. I want to share with you several pertinent facts from their findings concerning sex offenders. From page 3 it says: "232 child molesters revealed an astounding capacity for victimization. Those offenders whose victims were less than 14 years old had attempted 55,250 molestations and had completed 38,727. Their combined victims numbered 17,585 children, for an average 76 victims each." This study by Abel, Mittelman and Beckman done in 1983 went on to say "that the average male sex offender affects 380 victims in his lifetime, the number of victims increasing as the offender moves from adolescence to adulthood." If you take the statistics of just the convicted sex offenders I gave you earlier and multiply by the number of supposed victimizations thought to be happening in these studies it is convincingly clear the state of Montana should support Rep. Denny's HB 157.

You have heard powerful testimony as to the havoc wreaked in the lives of those victimized by sexual offenders. Should perpetrators be compelled to register under the provision of HB 157? Definitely. No one should know the pain and the agony of sexual violation. No culture will ever preclude the deviant preying on the innocent, but you have it in your power to even the odds. Please give a "do pass" to HB 157.

DATE 3/8/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 253 HB 157
~~HB 214~~ HB 214 HB 347

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
W James Kember	City of Billings	HB 347	✓	
Jane Christman	HB 214, HB 157	→	✓	
Derek VanLuchene		214, 157	✓	
John Connor	Attorney General's Office	HB 347 157-214	✓	
Pat Melby	State Bar of MT	HB 253	✓	
Blake Wordal	Lewis & Clark Co.	HB 347	✓	
Judge Martha C. Wordal	Hammett / Hardy	HB 347	✓	
Bob Martine	MT Democratic Party	HB 347	✓	
Dave Otten	Dept Corrections	HB 157	✓	
Sandy Heater	" "	HB 157	✓	
JOHN STRANDELL	CASCADE County	HB 214 HB 157	✓	
Lee Hawes Field	Shuthead Co / MAER	HB 347	✓	
Christine Kaufmann	MT Human Rights Network	HB 157 HB 347	Amend ✓	
Edmund Caplis	MBCA	HB 347	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

by REPRESENTATIVE KOTTEL as well as making sure that the bill deals with the specific problem of reimbursing counties for the costs of juries.

Closing by Sponsor:

REPRESENTATIVE HOLLAND stated that having to defend the action of the House Judiciary Committee was difficult because it was not what he originally proposed. He felt that it did strengthen the bill; however, he has no objection to this committee fine tuning the bill in any manner which they see fit to make it more understandable by the system. He has no objection to the amendment which REPRESENTATIVE KOTTEL proposed. His main concern is that the bill is acceptable and understandable and still performs the original intent of the counties. In the testimony in House Judiciary, a county commissioner made remarks to specifics as mentioned by the opponent. As far as the taxpayer and the county government is concerned, this is good legislation. By the committees efforts, it could be even better.

EXECUTIVE ACTION ON HB 157

Discussion: Valencia Lane explained the two amendments. The first one was proposed by SENATOR SUE BARTLETT which has to do with closing the hearing at which the person would petition to be taken off lifetime registration, EXHIBIT 2. The other set of amendments, EXHIBIT 3, are technical amendments Ms. Lane suggested the committee adopt because HB 214 has almost identical language. Since HB 157 deals with sexual offenders only, in several places it refers only to sexual offender. The other bill is both sexual offenders and violent offenders. That bill simply refers to the offender. If both bills pass, the section would be codified referring only to sexual offenders in several places, although it is intended to apply to both sexual and violent offenders. To take care of that potential conflict she recommended that the committee adopt this set of amendments to strike the word sexual before offender in several places in § 46-23-506, MCA.

SENATOR BARTLETT commented that she questioned whether the hearing when an offender is petitioning to be removed from lifetime registration should be a closed hearing. She is offering the amendment for committee discussion. If a offender is petitioning to be removed from the lifetime registration requirement and that hearing is a public hearing, regardless of what the judge decides, the offender has broadcast the fact that he or she is on lifetime registration. Even if they are removed from that requirement, it is somewhat meaningless since the press would more than likely be covering that hearing.

SENATOR LARRY BAER stated he had a problem with the word "must". In light of the open meeting law, a judge should be able to determine whether the right of the public to know would exceed

the individual's right of privacy. A judge would be a good person to determine that factor. He suggested the word "must" be replaced with "may" thereby leaving it up to the judge's discretion.

SENATOR BARTLETT stated that would improve the amendment.

HEARING ON HB 551

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM BOHARSKI, House District 79, Kalispell, presented HB 551. The House Judiciary Committee had a bill before them regarding DNA records testing for sexual offenses. The fiscal note stated that the cost of the original bill was almost identical to the cost of this bill. The Committee decided that because there were so few sexual offender cases and it would involve such a large amount of capital and initial costs into this DNA testing facility, that this might as well be expanded to include other violent crimes. As with most bills, he was somewhat concerned about the rulemaking authority but the members of the House and the Judiciary Committee felt comfortable that records would be necessary. On page 2, they added most of the language on lines 11 and 12 to add the violent crimes. As the bill originally came in, it dealt only with sex crimes. A question which came up was, who would have access and who would want to use these records. Initially, the language on page 3, section 4, stated the information on DNA records can be released for purposes other than someone who is being charged with a sex crime. They would be collecting records of people who were convicted of sex crimes only. However, it would be legitimate to access that information for all other crimes. The most contentious issue with this bill was with the expungement of DNA records. They changed the wording because there was a lot of concern about being convicted in a lower court of a crime and if that conviction was overturned, would it be reasonable for someone to keep your DNA records on file? They decided if the offense is reversed, the record would be expunged. According to the attorney general's office, it would take about two legislative terms before they would know how well this system is working. The report to the legislature is scheduled for the 56th Legislature rather than the 55th Legislature. In the House they discussed having the State of Montana enter into an arrangement with another state to save some of the setup costs for this.

Proponents' Testimony:

Bill Unger, Department of Justice, spoke in support of this bill. He is also the Director of the State Crime Lab in Missoula. In 1993 the Montana Board of Crime Control identified 179 rapes in Montana. Of the 179 reported to law enforcement, the Montana State Crime Lab received 67. The primary reason the rest of the cases were not submitted to the crime lab is a recommendation by the crime lab that they not be submitted. If there is no known

SENATOR BARTLETT, referring to the all or nothing proposal for additional space at St. Patrick's, asked if the crime lab would use the remaining space not needed by the DNA program?

Mr. Unger answered they are expecting growth in Montana which would indicate growth in the crime lab. Currently, in the drug chemistry area their turnaround time has changed from two weeks to six weeks. There has been a huge increase in drug cases in the last five years. They are completely flooded with latent fingerprint examinations. They would only be using the 1500 square feet at this time because they would need funds for remodeling the remaining 3500.

Closing by Sponsor:

REPRESENTATIVE BOHARSKI stated that Mr. Crichton brought up some points which would concern us. In order to collect this information, the person must be convicted of any of the sexual or violent crimes listed in the bill. Some of the concern is whether or not this information will be allowed in court. This information will be used more frequently as time goes on. One of the advantages of DNA testing is that not only can it help in prosecution, it can also help in clear exoneration of an individual.

SENATOR BRUCE CRIPPEN took over as chairman of the hearing.

EXECUTIVE ACTION ON HB 157

Motion: SENATOR HALLIGAN MOVED TO AMEND HB 157.

Discussion: SENATOR HALLIGAN commented the technical amendment is not a problem.

SENATOR HOLDEN questioned if the word "sexual" was stricken in the amendment, where would the bill reference "sexual offender"?

Ms. Lane commented that at the bottom of page 6 the bill is amending § 46-23-506. HB 214 also amends the same section and also contains (2) which is identical to (2) on page 7 of HB 157. Both bills refer to "any time after 10 years since the date of the sexual offender's last conviction of a sexual offense" and "the offenders last conviction of a sexual or violent offense".

SENATOR LORENTS GROSFIELD posed the question if HB 214 failed and this bill passed with the amendment, would there still be a problem?

Ms. Lane stated if this was the only bill to pass, the subsection would read "At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense, the offender may petition . . . the offender has the duty to register . . . the offender was convicted." There would be no problem.

Vote: The motion CARRIED UNANIMOUSLY on oral vote.

Motion: SENATOR BAER MOVED TO FURTHER AMEND HB 157, EXHIBIT 5.

Discussion: SENATOR HOLDEN commented that last week they passed HB 69, the crime victim's bill. That bill contained language wherein the victims of crime would know what would happen to the offender. This would be accomplished by opening the forum so that the victims could attend public hearings. He believed this amendment would give the judge the discretion of deciding whether or not the victims should attend. There is a possibility that the victim would not participate. He objected to the amendment.

CHAIRMAN CRIPPEN stated this amendment only stated the hearing may be closed to the general public. He believed the victim would still have the opportunity to be involved.

SENATOR HALLIGAN commented the crime victim's legislation would supersede this bill. If there is specific language in that bill allowing victims to be part of the process, they would not be considered the general public and would be allowed to attend the hearings.

CHAIRMAN CRIPPEN stated there might be a request by the victim that in fact the hearing be closed to the general public. An example would be the woman who testified at the hearing who did not know how her husband was killed or any of the circumstances about his murder. She may want the knowledge but that does not mean the general public should hear about it at that point in time.

SENATOR HOLDEN stated that he still felt a judge would be allowed the discrepancy on whether or not a certain situation will occur. They would be interjecting another political philosophy into the scheme of this bill.

SENATOR BAER commented there is a constitutional and statutory duty under open meeting law whereby any government body which comes together is required to have the meeting open to the public unless the governing person of that body, in this case the judge, makes the decision that the right of the public to know exceeds the right of an individual's person privacy. In this case, the victim would be a part of the process and would be allowed regardless of the public's right to know. If the public's right to know was decided to be insufficient in the balancing test, it would not deny the victim the right to be at the meeting.

SENATOR GROSFIELD commented that everyone on the committee agrees that the language "may be closed to the public" should not apply to the victim.

CHAIRMAN CRIPPEN stated they would take this as a conceptual amendment and have Ms. Lane word the amendment in proper form.

He stated that SENATOR BAER's motion would provide that the hearing may be closed to the public but that does not mean the victim.

SENATOR DOHERTY asked whether, in a closed judicial hearing, the victim's families would be subject to the same confidentiality provisions which everyone else in the courtroom would be subject to.

CHAIRMAN CRIPPEN stated that once the judge admonishes those within the hearing, as he or she would do, that would apply to everyone in the hearing room. The victim would fall under the same admonishment by the judge.

SENATOR HALLIGAN stated the existing victim's rights legislation allows a defendant to request that a hearing, all or part, be closed. Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect either the party's right to a fair trial or the safety of the victim. That applies to pretrial proceedings. This would not be a pretrial proceeding. He suggested making the language consistent with HB 69.

Vote: The motion to amend CARRIED UNANIMOUSLY on oral vote.

Motion/Vote: SENATOR HOLDEN MOVED HB 157 AS AMENDED BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote.

DATE _____

3-10-95

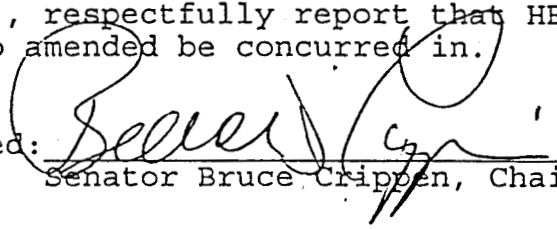
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 157 (third reading copy -- blue), respectfully report that HB 157 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 7, line 2.

Following: "of the"

Strike: "sexual"

2. Page 7, line 3.

Following: "the"

Strike: "sexual"

3. Page 7, line 5.

Following: "relieving the"

Strike: "sexual"

4. Page 7, line 10.

Following: "WHICH THE"

Strike: "SEXUAL"

5. Page 7, line 13.

Following: "the"

Strike: "sexual"

6. Page 7, line 16.

Insert: "(3) The offender may move that all or part of the proceedings in a hearing under subsection (2) be closed to the public, or the judge may take action on the judge's own motion. Notwithstanding closure of the proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy."

-END-



Amd. Coord.

Sec. of Senate



Senator Carrying Bill

561434SC.SRF

Amendments to House Bill No. 157
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 9, 1995

1. Page 7, line 12.

Following: "victims."

Insert: "The hearing ~~must~~ be closed to the public."

may

Amendments to House Bill No. 157
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 9, 1995

1. Page 7, line 2.
Following: "of the"
Strike: "sexual"
2. Page 7, line 3.
Following: "the"
Strike: "sexual"
3. Page 7, line 5.
Following: "relieving the"
Strike: "sexual"
4. Page 7, line 10.
Following: "WHICH THE"
Strike: "SEXUAL"
5. Page 7, line 13.
Following: "the"
Strike: "sexual"

NOTE:
This is a
technical amendment
needed if both
HB 157 and HB 214
pass - to avoid
a conflict
in (2) of 46-23-501
Valencia

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 157

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on April 7, 1995, at
9:04 a.m. in Room 410.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen (R)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Rep. Robert C. Clark (R)
Rep. Matt Denny (R)
Rep. Debbie Shea (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Carla Turk, Committee Secretary

Discussion:

CHAIRMAN BRUCE CRIPPEN explained this was a Free Conference Committee which would allow addressing most any issue within the Bill. He expressed a desire to clarify the question of the length of sentencing language. CHAIRMAN CRIPPEN related that he had asked Greg Petesch to prepare an amendment which would appear on page 7, line 15 of the Bill (hb015702.agp). He remarked that the amendment would strike the reference to "45-5-505" which was the deviant sexual conduct rule. He further explained the amendment as providing coordination instruction which, if HB 214 and HB 157 both passed, then HB 157 would take precedent over SENATOR KLAMPE'S presently standing amendment in HB 214. He further explained his proposed amendment as striking the reference to the section in both Bills. He stated understanding that if nothing was done with the presently adopted Senate Floor Amendment to HB 214 by SENATOR KLAMPE, it would prevail over existing language in HB 157. He expressed a desire to remove the section reference in both Bills to allow a positive approach. CHAIRMAN CRIPPEN sought comments from other Committee Members regarding the amendment.

Motion:

SENATOR MIKE HALLIGAN MOVED ADOPTION OF AMENDMENT #:
hb015702.agp DATED APRIL 5, 1995.

REPRESENTATIVE MATT DENNY stated he was in favor of the motion, as original introduction of the Bill had included this part of the existing code. He reported having asked the House Judiciary Committee to remove the reference to section 45-5-505 from the registration requirements of the Bill and the Committee's choice to not remove it. He stated being glad to have the reference removed.

THE QUESTION WAS CALLED FOR.

Vote:

THE MOTION CARRIED.

Discussion:

CHAIRMAN CRIPPEN asked REPRESENTATIVE DENNY if he would like to discuss some of the changes as he knew SENATOR HALLIGAN had some concerns with the way they had been presented in the House. He expressed a desire to hear from interested parties as well.

REPRESENTATIVE DENNY stated they had no problem with the Committee Amendments on the front page because the amendments coordinated with HB 214. He said that on the other hand the House Floor Amendments had completely changed the original intent of the Bill. He defined the original intent as providing judges and the Department of Corrections and Human Services the option of returning sex offenders to an appropriate correctional facility if they did not complete their therapy or continue with treatment for their problem. He explained that the amended version of the Bill would basically allow release to non-confining community based programs for potentially dangerous offenders. REPRESENTATIVE DENNY attested he did not feel the courts would use that option in sentencing. He maintained that he would like to return the Bill to its original language with the exception of limiting it to "Montana" Correctional Institutions or, as some judges had suggested, strike those sentencing options altogether and replace the upper limit on the allowable time of sentencing to prison with the word life. He added that he was suggesting the change, with the assumption that the judges would use the form of sentencing provisions provided in 46-18-201 to creatively structure sentences which would serve the intent of the Legislature.

SENATOR HALLIGAN questioned what the fiscal note impact on that approach would be? **REPRESENTATIVE DENNY** said he had not checked it out with the budget office, but it had always been his belief that it would actually lower the impact on the prisons because there would be a strong incentive for the offenders to complete the treatment program and work their way out of the system. He characterized this affect as occurring because the offenders would otherwise be threatened with being returned to the system if they did not comply with recovery requirements. He accounted that approximately one third of the prisoners in the State Prison were sex offenders and quite a few of them refused to go through treatment because they would not admit having done anything wrong. He reported those prisoners as staying in prison for the full extent of their term and costing a lot of money and professed that if they knew there would be no release unless treatment was completed he thought the State would actually be saving money.

SENATOR HALLIGAN stated he could only speak for himself, but he did not think the Senate would have any problem determining a position by striking the rest of the Van Valkenburg Amendment and deal with the Bill as it had reached the Senate Floor.

CHAIRMAN CRIPPEN stated a desire to hear comments from the Department and Judge Larson.

David Ohler, attorney for the Department of Corrections and Human Services, said the Department was urging the Committee to adopt the initial language in HB 157 which provided a sentencing alternative to judges, whereby they could sentence a sex offender to the Department of Corrections for appropriate placement for the rest of their lives. He described HB 157 as the result of work done by the Governor's Advisory Council on Corrections and Criminal Justice Policy. He reported the Council as a wide cross section of people connected with the criminal justice system which included two district court judges, a justice from the Montana Supreme Court, a couple of county attorneys, police, sheriffs, probation parole officers and people from the prison. He explained there had been a lot of discussion which led to the Council's almost unanimous vote to propose HB 157 as it appeared on the floor. He reported one dissenting vote which was based on the lifetime registration and not the lifetime sentencing.

Mr. Ohler stated that sex offenders were never cured and the whole purpose of HB 157 was to keep a handle on those offenders. He said the ideal happening under this Bill would be that a sex offender who was sentenced to the Department would be sent to prison for some period of time until they had gone through treatment and mental health-and-treatment professionals felt that person was not a threat to a community. He contended that at this point the person could be placed out in a community and moved through several steps of intensive supervision within the prerelease program. He said the advantage to having the life time sentence option was always retaining a handle on the

offender so that if the person began behaviors which indicated reoffense, refused to participate in treatment or displayed other behaviors which indicated reoffense the handle could be used to ultimately pull the offender back to prison for redirection toward community supervision.

Mr. Ohler said one of the issues considered and rejected by the Council had been to simply change the sentencing statutes to make the maximum term to Montana State Prison life. He stated that idea had been rejected because there was fiscal impact which had not been addressed yet and a life sentence did not really end the problem and provide a solution for trying to get sex offenders into treatment where they did fairly well. He maintained that simply sentencing sex offenders to prison would not give the offender a chance for rehabilitating himself for inclusion back into the community. He stated it was for these reasons that the Department urged the Committee to adopt the language in the initial draft of the Bill.

Judge John Larson said he thought the judges of the 4th Judicial District were as intent as most of the members of the Committee in that they were confused about the life sentence issue. He stated that prior to the Session he had spoken with the chief sponsor of the Bill, REPRESENTATIVE DENNY, and at that time all of the judges of their district had agreed that having the life sentence option to the prison in addition to the life sentence to the Department would be the best of all possible worlds. He attested that it would keep the Department, Executive Branch and Judicial Branch working together in an unprecedented manner. He contended that a life sentence to Montana State Prison gave the sentencing judge a whole range of options. He commented that when the options included treatment the judges could suspend some or all of that sentence and could divert the offender into treatment. He explained that if the offender did not follow through with treatment they would be placed back before the sentencing judge following a parole or probation violation, the victims could be brought back into court for their views to be heard and the judge could determine whether the offender should undergo some other type of treatment or be sent to prison for protection purposes. He said that was not an option when there was only life commitment to the Department of Corrections and the Department was making those decisions. He said he felt the Department's record was quite clear as to how much contact would be made with victims, the community and the sentencing judge before they decided to make any changes. He attested that the Department had a record of trying to make contact with sentencing judges before release, but none regarding placement in prerelease centers or communities.

Judge Larson said the judges felt accountable to the community and the victims, and Legislature's giving the judges the sentencing option of a life sentence gave judges a whole range of local treatment decisions best left at the community level. He identified the concept of the Department of Corrections

- sentencing as only having been in affect for two years and said the judges had originally been asked by the Department to implement it for non-violent offenders. He professed feeling that his District was one of the most frequent users of the Department of Correction's Commitment when it came to non-violent offenders who didn't greatly impact the community. He remarked that when it came to serious offenses he thought the recommended policy should be that Legislature give the judges the option to have the life sentence to divert offenders to the treatment programs if appropriate.

Judge Larson said there were some offenses such as indecent exposure which appeared to be minor offenses for which the possibility of a life sentence was being proposed. He reported knowing at first glance would make that seem extreme and harsh. He attested that recently a judge had an offender appear before him who had three prior sex offenses and a couple of probation violations and was now caught in an indecent exposure situation. He stated the sentencing judge had given the stiffest sentence possible, which was fifty years. Judge Larson said that with the way good time and early release worked he calculated by changing the years to months and the sentence would likely be fifty months. He declared that the judge had no leeway on probation and could only give the offender the maximum in prison and with the present system that offender could be back on the street without being subject to supervision. He said that in this case he thought there was a prior sex offender with three or four convictions and when that person was caught in a seemingly minor offense such as indecent exposure, the sentencing judge should have the opportunity to give the offender a life sentence with some time for each prison and treatment, but always keeping control over the offender for the rest of their life.

Judge Larson identified the part of the Senate Amendment which the judges would have a problem with as a sentence to the Department with the restriction on no good time, parole, furlough or early supervised release. He contended there may be some people who the judges could send to the Department and state that was final as there appeared to be no hope of any benefit through treatment and the party should never be released. He said that portion of the Senate Amendment gave the judges an even stronger method of dealing, as the Department would not have any discretion to release that person out and that language was stronger than any power in existing statute.

Judge Larson stated he had not heard the Floor Debate on the community based program amendment and did not have all the background Committee Members had. He termed his concern regarding a community based program for life as not thinking they had any community based sex offender programs within prerelease centers. He told of standing before a crowd of approximately three hundred in a community and stated knowing that people did not want sex offenders in community based programs and that they would refuse to enlarge or support prerelease centers which

housed sex offenders. He said that for these reasons he had serious concerns, but if the Senators or others wished to inform him as to why that would be a benefit, he was open to hearing their ideas.

Judge Larson said the judges primarily wished to ask for the increased sentencing option of life so that they could give offenders an appropriate sentence. He portrayed that as the reason for judges and if there was only going to be a simple formula for implementation, he did not think judges were needed. He said he felt there were people in this position for the purpose of looking at the particular circumstances of the events, how many priors, and what prior treatment experience the offender had. He said it appeared that Legislature wanted to place a priority concern, the judges applauded the concept and thought it should follow through as to the option for prison. He stated his reasoning was not because offenders would be sent to prison for life but that judges would be allowed to maintain direct control over the criminal for the rest of their life while giving them a chance at rehabilitation or treatment. He said that if treatment efforts failed, the community would be assured that the offender would not be released.

CHAIRMAN CRIPPEN said SENATOR VAN VALKENBURG had expressed concern on the Senate Floor that offenders could be sentenced to out-of-state facilities and the Senate had not wanted that to happen. Judge Larson said they concurred with that as they would not want to see them sent out-of-state or any increased expense incurred.

SENATOR LORENTS GROSFIELD said it seemed problematic to have the community based program language in the Bill when the State did not have community based programs. He referred to Judge Larson's comment that there may be resistance to establishing that sort of facility if local people understood it would lead to sex offenders being placed in their community. He said he was not sure if that possibility existed with the original language but he didn't feel it made sense to have the language when community based programs did not exist.

CHAIRMAN CRIPPEN asked if there were any of these programs available? Judge Larson said none really suitable for violent sex offenders as the only ones in existence put offenders out on their own, with no supervision and only a provision for offenders to report to a doctor.

CHAIRMAN CRIPPEN asked the sponsor's thoughts on his Bill.

REPRESENTATIVE DENNY expressed thoughts that he would like to see the second sentencing option be returned to its original form, allowing judges the option to sentence offenders to the Department of Corrections and Human Services for life and additionally change the first sentencing option so the upper limit was changed to not exceed life. He said perhaps it would

be appropriate to place a statement of intent on the Bill which would make Legislature's intent clear that judges should use their discretion and creativity with these sentencing options to minimize costs while maximizing protection of society, the victims, and the potential for rehabilitation.

CHAIRMAN CRIPPEN asked how the Department felt? **David Ohler** stated one fiscal impact hadn't been considered and he felt it would exist if offenders could be sentenced to Montana State Prison for life. He said the possible impact was something for Legislature to decide but he thought they needed to be aware the life imprisonment sentence for sex offenders was going to impact the prison population. He maintained not knowing how many sex offenders would be sentenced to life imprisonment but termed it a concern. He commented that if the Legislature was considering extending the maximum term in prison to life, he did not believe it would be necessary to retain the language about sentencing to the Department of Corrections for life. **Mr. Ohler** attested he felt the language would be taken care of.

CHAIRMAN CRIPPEN queried as to how it was taken care of? **David Ohler** stated there was already a sentencing option providing for offenders to be sentenced to the Department of Corrections or Montana State Prison. He contended that along with this proposed language there was another statute which in affect stated the judge could sentence to the Prison or the Department of Corrections.

CHAIRMAN CRIPPEN asked what the Department would do with an offender sentenced to the Department? **David Ohler** stated the Department would place the offender and incorporate a correctional institutional program based on the Department's evaluation.

CHAIRMAN CRIPPEN asked to be given an example? **David Ohler** explained that if a sex offender was sentenced to the Department of Corrections for appropriate placement, it would be up to the Department to determine where that individual should be placed initially, how and when that individual should be move through the correction system from the prison to pre-release centers or whatever. He stated the determination would be made by the Department of Corrections.

REPRESENTATIVE DENNY stated that if **Mr. Ohler** was correct about the statute he supposed it would be appropriate to just change the upper limit to life and strike the second sentencing option. He said in that case, he would agree.

CHAIRMAN CRIPPEN suggested using sexual intercourse without consent language as an example on page 2, section 2, beginning on line 12.

REPRESENTATIVE DENNY stated the changes could be made on page 1, line 29 by changing the twenty years to life, imprisoned in the State Prison for a term of not less than two years or more than life and on page 2 strike (b).

Valencia Lane asked where he meant to strike (b)? REPRESENTATIVE DENNY replied on page 2, line 1.

Valencia Lane stated they were starting on page 2 on 45-5-503, line 29 and asked if they wanted to change 40 years to life? REPRESENTATIVE DENNY said page 2, line 18 was the first instance requiring the change of twenty years to the word life and strike (b) beginning on line 20.

Valencia Lane clarified as to whether he meant to strike the entirety of lines 20 through 25? REPRESENTATIVE DENNY affirmed that as correct, because all of the fines available were the same.

CHAIRMAN CRIPPEN asked if this solved the problem the sponsor wanted addressed? REPRESENTATIVE DENNY replied yes, because as Mr. Ohler had stated, there was an option in the forms of sentences for placement with the Department of Corrections.

SENATOR CRIPPEN stated he thought the sense of the Legislature would be to sentence these offenders for life under some type of supervision. He narrated that with this change the judge could sentence offenders to the Montana State Prison for life, have the option of sentencing them for life under the authority of the Department of Corrections, or have the discretion to modify their decision by suspending a portion of the sentence.

SENATOR HALLIGAN asked how a portion could be suspended when someone was sentenced for life? Judge Larson said a period of years could be suspended or all but a period of years could be suspended.

CHAIRMAN CRIPPEN asked if the Department could work under the amendments? David Ohler said he thought the Department could work under the amendments as long as the Committee was aware there was a fiscal impact associated with them. He commented that SENATOR HALLIGAN had raised a good question, as he did not know how a portion of a life sentence could be suspended when it was not known when that person's life was going to end.

REPRESENTATIVE DENNY asked if it could be done as some form of a condition of probation? Beth Baker, Assistant Attorney General, Department of Justice, said the sentencing for deliberate homicide or aggravated kidnapping already provided that alternative by the sentence being "termed life imprisonment or by a term of not less than ten years or not more than one hundred years". She suggested the same language could be utilized in this Bill.

CHAIRMAN CRIPPEN queried as to whether that language would answer the question raised? SENATOR HALLIGAN said he thought that would provide the option needed.

CHAIRMAN CRIPPEN said there was still a provision in the Bill where the defendant could come in and petition before the judge. Dave Ohler clarified that as only having to do with lifetime registration.

CHAIRMAN CRIPPEN asked why that provision was in this Bill? Dave Ohler answered that this Bill was also a lifetime registration bill essentially identical to HB 214 except with the lifetime sentencing added.

CHAIRMAN CRIPPEN asked if the Senator carrying the Bill on the Senate Floor had any comments. SENATOR RIC HOLDEN said the method of petitioning was still provided for ceasing lifetime registration on pages 7 and 8, so that avenue was still open to the defendants and the Department of Corrections. He stated having no problem with the suggested changes and thinking REPRESENTATIVE DENNY'S proposals would work.

CHAIRMAN CRIPPEN said he thought that by changing the option there was still going to be a problem with the fiscal note. He stated he thought that was going to be a problem no matter what was in the Bill. Dave Ohler said they did not believe there was a fiscal impact the way HB 157 was originally written, because the impact was principally going to be on increased probation and parole and that was provided for in the Governor's budget. He said he thought that had been received through the Legislative process. He said the part which had not been addressed was offenders who were going to be sentenced to Montana State Prison for life. He said he thought that would be an added fiscal impact.

REPRESENTATIVE DENNY pointed out that the maximum sentences ranged upward twenty to forty years and the fiscal impact of their further sentence would be quite a bit down the line. He said that he did not know if it was going to be that great of an increase in the Prison population that wouldn't already go there under current law.

SENATOR HALLIGAN said he guessed the House Amendments to SENATOR LYNCH'S Bill delayed this one year for the purpose of getting an idea of the numbers. He suggested that since there was an ongoing Commission the normal effective date of October 1st could be moved one year to allow the judges to potentially give some idea how many people they normally would have sentenced to life. He said that may allow the Department of Corrections to get a better idea of what was going to happen.

CO-CHAIRMAN CLARK said he thought another consideration was that generally, on a first offense, they would not be required for registration for a life sentence and you would not see a life or 100 year sentence for a first offense. He asked if it would be way down the line before there would be that type of sentencing **Judge Larson** said their experience was that there was some possibility the first time, but he did not think they wanted to repeat three or four before they were out. He said he thought **SENATOR LYNCH'S** Bill took care of one of the areas, but if there was no hope for much treatment he thought it should be like two offenses of a serious nature or a prior juvenile record in the same area. He stated it would delay the fiscal impact.

Dave Ohler said he thought the fiscal impact could begin tomorrow as an offender could commit their third offense tomorrow. He did state that he thought **CO-CHAIRMAN CLARK** was right that the fiscal impact was not going to be felt for a while. He said the average incarceration rate for sex offenders from 1990 to 1994 was 10.8 years and that was when a fiscal impact from people sentenced to Montana State Prison for life would become evident.

Judge Larson said he thought the sentence would give an extra incentive to some people in Prison to go through treatment and have a positive performance. He said people could actually get out of Prison earlier when they saw this new sentence and knew they would have to go through some type of treatment.

CHAIRMAN CRIPPEN said he thought that for the most part offenders denied their crime for a period of time. He stated there was a treatment program in Billings, outside the Prison, and said that would be an incentive for these folks to get to that point. He suggested that they knew they were going to be registered for life. He asked if it was retroactive. **Judge Larson** stated no it was not.

SENATOR GROSFIELD asked to look at page 2, line 18-25 and clarify the amendment. **CHAIRMAN CRIPPEN** asked for a review of the proposed amendment, as it applied to all of these sections. **REPRESENTATIVE DENNY** stated that at the end of line 18 they replaced twenty years with life or 99 years and struck lines 20-25.

CHAIRMAN CRIPPEN asked if there wasn't already a code section containing dual time sentences? **David Ohler** said yes, 100 years or life. **Beth Baker** read the code section in question.

CHAIRMAN CRIPPEN asked if the proposed amendment could be changed to 100 years so it would conform with existing sentencing language in the other code section and be consistent?

Beth Baker pointed out that there was a difference between a life sentence and sentence of a term of years. She said that with a term of years you were eligible for parole after a period of

seventeen and one half years and with a life sentence it was thirty years.

CHAIRMAN CRIPPEN stated that covered the first part of the amendment and asked for clarification on the second part.

REPRESENTATIVE DENNY said that struck the second sentencing option in line 20-25. He asked if he was correct that the judges could put a condition on the parole? **Judge Larson** said that within the requirement for parole they could put limitations on the requirements for probation, but could not affect good time.

CHAIRMAN CRIPPEN said if they struck the community based program, which seemed to be a stickler, then would he suggest keeping (b) in the Bill. He stated that would give the alternative sentence to the Department of Corrections for placement in an appropriate Montana correctional facility for a period not exceeding the maximum prison sentence without the right to earn good time. He said all that was being addressed here, was keeping good time to be released on parole or placed on furlough. He asked if anyone had a problem with that part?

SENATOR HALLIGAN said he thought just the fiscal impact which he felt was massive. **CHAIRMAN CRIPPEN** replied that it was an option for a person who was very bad and obviously had to be incarcerated for the rest of their life, with no opportunity of release. He asked if the judge shouldn't have that option?

Dave Ohler said he thought the judge already had that option. He said the judge could currently sentence the described person to Montana State Prison for life through existing criminal Codes, by making them ineligible for parole.

CHAIRMAN CRIPPEN asked for a response from the judge. **Judge Larson** said he had been told he could not affect good time and they had seen very violent people on some sort of supervised release or furlough status, commit other crimes. He said he thought this gave a clear expression of the Legislative desire regarding these particular repeat violent offenders, as it gave a clear sentence that the victim, people of the community and even possible potential perpetrators could understand that this was what the sentence was and this was what the sentence meant. He said he felt one thing which would be very helpful to the criminal justice system was for more people to be able to understand that a sentence was a sentence and that life without release possibilities or supervision violations meant exactly that. He said he thought the system had a credibility problem because of some recent incidents and he thought this would convey policy and a statement to the people, from the Legislature. He portrayed that statement as an understanding by the Legislature that when a judge determined that these types of offenders should not be released, this policy would explain what "never get out" meant = no good time, no parole and no furlough.

CHAIRMAN CRIPPEN stated there was (a) for in the State Prison and (b) in an appropriate Montana Correctional Institution for that period of time and no longer did the maximum of 100 years or life now apply. **REPRESENTATIVE DENNY** suggested striking (b) and stating "no more than 100 years with or without the right to earn good time". He said that then there would be discretion and asked if that could be done?

Beth Baker said she was sure it could be done, but thought it was not necessary. She said the only thing they were adding to Statute was good time. She stated that was because the judges could, under 46-18-202, impose a restriction that an offender was going to be ineligible for parole and participation in a supervised release program while serving this term. She said that within 46-18-201 the court had the option of sentencing to the Department. She said that by amending the Bill to impose the life sentence and adding the restriction on the good time, it was sort of a double whammy to the Department because it could restrict their flexibility in terms of the Prison population.

CHAIRMAN CRIPPEN stated that was the whole purpose of this Legislation. **Beth Baker** said that was correct and the Legislature needed to be aware of it.

CHAIRMAN CRIPPEN said he thought the Legislature was aware and felt that was the decision which had to be made, that there was no possibility of being released. He said his only question was if there should be a provision, even though the appropriate facility would include Montana State Prison, to also include another option if one arose? He said that could possibly reduce the fiscal note. **Beth Baker** said she thought she agreed there did not to be two subsections, if the maximum sentence was going to be life, because under current sentencing statute the judge could sentence to the Prison or the Department.

CHAIRMAN CRIPPEN explained that the Bill only stated to the Prison. **Beth Baker** said that in the other sentencing statutes that meant either to Prison or the Department. She expressed no need for two subsections and said they could add the good time restriction if desired.

CHAIRMAN CRIPPEN asked if she was telling the Committee that when they said State Prison it could be to either State Prison or to the Department of Corrections? He asked if there was any further caveat if the sentence was to the Department of Corrections? **Beth Baker** said that in 46-18-201 it stated "the court may impose a State Prison sentence for the offense or commit the defendant to the Department of Corrections and Human Services for placement in an appropriate correctional institutional program".

CHAIRMAN CRIPPEN asked how the amendment should be drafted? **David Ohler** explained this language came from statute 46-18-201 and the language regarding the sex offenses had come from various other Code sources. **Valencia Lane** asked if there was a reason

the language would be better amended in 46-18-201 as opposed to placing it in the individual title 45 crimes that are in the Bill.

CHAIRMAN CRIPPEN said he would like to see the amendments prepared and stated the Committee had adopted one which struck the references to 45-5-505. He expressed his concern for the need to utilize the same language throughout and allowing time for the drafting to be done. Valencia Lane said she would look it over and choose whether to draft the language for page 2, line 18 or list these particular sex crimes within 46-18-201 or 46-18-202 and state those crimes would not be eligible for good time.

REPRESENTATIVE DENNY said he thought eligibility for good time should be at the option of the judge.

SENATOR HALLIGAN suggested adopting the amendments because Committee Members seemed to agree and knew the desired affect. He said Valencia Lane could then choose the best way to accomplish the drafting of the amendments.

CHAIRMAN CRIPPEN asked if everyone was clear as to what was being done? A brief interchange of thoughts followed with a consensus of approach being reached to: 1) increase penalties for the crime in the Bill to "life imprisonment or by a term of not less than 10 years or more than 100 years and strike the new subsections (b)s in the Bill that provide for sentencing to the Department of Corrections; 2) put into the Bill a provision prohibiting good time, at the option of the sentencing judge; 3) take out the Senate Floor Amendments; 4) strike the reference to 45-5-505; and 5) amend the Title of the Bill, as needed. It was also decided that the amendments should keep the distinction of enhanced penalties for subsequent offenses, as currently appear in several of the criminal sections in the Bill. It was decided that Valencia Lane would draft the amendments and all parties present would be consulted to assure their agreement that the proceedings of the Committee work had been reached.

Motion/Vote:

SENATOR HALLIGAN MOVED THE AMENDMENTS AS THEY HAD BEEN DISCUSSED AND EXPRESSED BY REPRESENTATIVE DENNY AND INCLUDED THE ABILITY OF VALENCIA LANE AND OTHERS TO WORK TOGETHER TO FINALIZE THE AMENDMENTS AND PREPARE THE FREE CONFERENCE COMMITTEE REPORT. THE MOTION CARRIED UNANIMOUSLY.

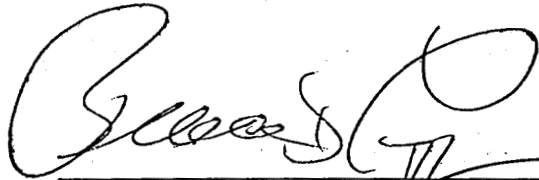
SENATOR HALLIGAN suggested CHAIRMAN CRIPPEN would have to request a revised fiscal note. CHAIRMAN CRIPPEN agreed and assigned the Secretary to the needed tasks.

CHAIRMAN CRIPPEN clarified that as a matter of procedure he thought the Senate Amendments had to have been struck. Valencia Lane stated the amendments she drafted would include those changes as necessary.

CHAIRMAN CRIPPEN asked if anyone felt a need for the Committee to meet again? A brief discussion revealed that each Member and participant would review the amendments for their approval before signing the Committee Report and another meeting would not be necessary.

ADJOURNMENT

Adjournment: The meeting was adjourned at 10:05 a.m.

A handwritten signature in black ink, appearing to read "Bruce Crippen", written over a horizontal line.

SENATOR BRUCE CRIPPEN, Chairman

CARLA TURK, Secretary

BC/cmt

HOUSE BILL NO. 157

INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON,
HEAVY RUNNER, SHEA, GALVIN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

INCREASING PENALTIES FOR

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO

~~THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN A
COMMUNITY-BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA CORRECTIONAL
INSTITUTION OR PROGRAM FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE~~

INCREASING FINES FOR THOSE OFFENSES; PROVIDING THAT ~~THOSE PERSONS~~ ^{CERTAIN SEXUAL OFFENDERS} ARE TO REGISTER AS
SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC
PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL
IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507,
45-5-625, 46-18-202, 46-23-502, 46-23-506, AND 46-23-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual
contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
county jail for ~~any~~ a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he the~~
~~offender~~ shall be ^{punished by life imprisonment or by imprisonment}

~~be imprisoned~~ ¹⁰⁰ in the state prison for ~~any~~ a term of not less than 2 years or more than ~~20~~ years and
may be fined not more than \$50,000 ~~or~~

~~(b) sentenced to the department of corrections and human services for placement by the~~
 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
 be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit
 the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender
 is 3 or more years older than the victim."

Section 2. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual
 intercourse without consent with another person commits the offense of sexual intercourse without
 consent. A person may not be convicted under this section based on the age of the person's spouse, as
 provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be ~~imprisoned~~
~~imprisoned~~ in the state prison for a term of not less than 2 years or more than 20 years and
 may be fined not more than \$50,000, except as provided in 46-18-222 ~~or~~ ¹⁰⁰

~~(b) sentenced to the department of corrections and human services for placement by the~~
~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~
~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
~~be fined not more than \$50,000.~~

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
 without consent, the offender shall be ~~imprisoned~~
~~imprisoned~~ in the state prison for any a term of not less than 2 years or more than 40 years and
 may be fined not more than \$50,000, except as provided in 46-18-222. An act "in the course of

1 committing sexual intercourse without consent" includes an attempt to commit the offense or flight after
2 the attempt or commission. ~~on~~

3 ~~(iii) sentenced to the department of corrections and human services for placement by the department~~
4 ~~in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~
5 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
6 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
7 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
8 ~~be fined not more than \$50,000.~~

9 (b) If two or more persons are convicted of sexual intercourse without consent with the same
10 victim in an incident in which each offender was present at the location where another offender's offense
11 occurred during a time period in which each offender could have reasonably known of the other's offense,
12 each offender shall be *punished by life imprisonment or by imprisonment*
13 ~~imprisoned~~ in the state prison for a term of not less than 5 years or more than ¹⁰⁰40 years and may
14 be fined not more than \$50,000, except as provided in 46-18-222. ~~on~~

15 ~~(iii) sentenced to the department of corrections and human services for placement by the~~
16 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~
17 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
18 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
19 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
20 ~~be fined not more than \$50,000.~~

21 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
22 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
23 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
24 the offense. The amount, method, and time of payment must be determined in the same manner as
25 provided for in 46-18-244.

26 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without
27 consent" includes an attempt to commit the offense or flight after the attempt or commission."

28
29 Section 3. Section 45-5-504, MCA, is amended to read:

30 "45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the

1 person's own sexual desire of himself or the sexual desire of any person, exposes ~~his~~ the person's genitals
2 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
3 commits the offense of indecent exposure.

4 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
5 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

6 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
7 imprisoned in the county jail for a term of not more than 1 year, or both.

8 (c) On a third or subsequent conviction, ~~he~~ the person shall be ~~punished by life imprisonment or by imprisonment~~
9 ~~if fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not less~~

5 ~~years or 100~~ and may be fined not more than \$10,000
10 ~~more than 5 years, or both, or~~

11 ~~if sentenced to the department of corrections and human services for placement by the~~
12 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~
13 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
14 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
15 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
16 ~~be fined not more than \$10,000."~~

17
18 Section 4. Section 45-5-507, MCA, is amended to read:

19 "45-5-507. Incest. (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
20 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
21 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
22 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
23 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

24 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
25 consent is ineffective if the victim is less than 18 years old.

26 (3) A person convicted of incest shall be ~~punished by life imprisonment or~~
27 ~~if imprisoned in the state prison for any a term not to exceed 20 years or be fined an amount not~~
28 ~~to exceed \$50,000, or both, or~~ 6/100

29 ~~if sentenced to the department of corrections and human services for placement by the~~
30 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~

~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
~~be fined not more than \$50,000.~~

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
 be ~~imprisoned~~ *punished by life imprisonment or by imprisonment of not less than 4 years or more than 100*
~~in the state prison for any term not to exceed 20 years and may be fined not more~~
~~than \$50,000.~~

~~(b) sentenced to the department of corrections and human services for placement by the~~
~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~
~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~
~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~
~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~
~~be fined not more than \$50,000.~~

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
 The amount, method, and time of payment must be determined in the same manner as provided for in
 46-18-244."

Section 5. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of
 children if the person knowingly:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
 conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
 videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with intent to sell, exhibits, or advertises~~ any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in which children are engaged in sexual conduct, actual or simulated; ~~or~~

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of sexual abuse of children shall be *punished by life imprisonment or by imprisonment*

100 ~~(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed 20 years, or both, or~~ *and may be fined not more than \$10,000*

~~(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$10,000.~~

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be *punished by life imprisonment or by imprisonment*

or more than 100 ~~(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed 50 years, or both, or~~ *of not less than 4 and may be fined not more than \$10,000*

~~(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$10,000.~~

(c) A person convicted of the offense of sexual abuse of children for the possession of material,

1 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for
2 a term not to exceed 6 months, or both.

3 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print
4 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed
5 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment
6 course or program conducted or approved by the department of corrections and human services."

7 *Section 6. amend 46-18-202*

8 Section ~~7~~ ⁷. Section 46-23-502, MCA, is amended to read:

9 "46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions
10 apply:

11 (1) "Department" means the department of corrections and human services provided for in Title
12 2, chapter 15, part 23.

13 (2) "Sexual offender" means a person who has been convicted of a sexual offense.

14 (3) "Sexual offense" means:

15 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), ~~45-5-505~~, 45-5-507 (unless the act
16 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

17 (b) any violation of a law of another state or the federal government reasonably equivalent to a
18 violation listed in subsection (3)(a)."

19
20 Section ~~7~~ ⁸. Section 46-23-506, MCA, is amended to read:

21 "46-23-506. Duration of registration. (1) A person required to register under 46-18-254,
22 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the
23 person's life, except as provided in subsection (2) of this section or during a period of 10 years after
24 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,
25 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions
26 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which
27 the person is in prison.

28 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~
29 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~
30 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~

~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense, the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if that court is not in this state, the district court for the judicial district in which the sexual offender resides~~
A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254, 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender was convicted
 THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any written or oral statements of the victim or victims. The court may grant the petition upon finding that:

(a) ~~the sexual offender~~ has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST, SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT TO PRIVACY."

Section ⁹~~8~~. Section 46-23-507, MCA, is amended to read:

"46-23-507. Penalty. A sexual offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more than 5 years or a fine may be fined not to exceed \$250 more than \$5,000 \$10,000, or both."

NEW SECTION. Section ¹⁰~~9~~. Dissemination of information in register. Information in the register

maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

NEW SECTION. Section ¹¹~~10~~. Codification instruction. [Section ¹⁰~~9~~] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section ¹⁰~~9~~].

-END-

NEW §. Section 12. Coordination instruction. If [this act and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void.



FREE CONFERENCE COMMITTEE

on House Bill 157
Report No. 1; April 7, 1995

Page 1 of 6

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 157 and recommend the following amendments:

1. Title, line 9.

Following: "AN ACT"

Strike: "ALLOWING"

Insert: "INCREASING PENALTIES FOR"

2. Title, lines 9 through 13.

Following: "SEX" on line 9

Strike: remainder of line 9 through first "THOSE" on line 13

3. Title, line 13.

Following: "OFFENSES;"

Insert: "INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES
TO LIFE IMPRISONMENT"

Strike: "THOSE PERSONS"

Insert: "CERTAIN SEXUAL OFFENDERS"

4. Title, line 17.

Following: "45-5-625,"

Insert: "46-18-202,"

5. Page 1, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

6. Page 1, line 29.

Strike: "20"

Insert: "100"

7. Page 1, line 30 through page 2, line 6.

Following: "\$50,000" on line 30

Strike: remainder of line 30 through "\$50,000" on page 2, line 6

8. Page 2, lines 17 and 18.

Following: "be" on line 17

Strike: remainder of line 17 through "imprisoned" on line 18

ADOPT

REJECT

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April 7, 1995

Page 2 of 6

Insert: "punished by life imprisonment or by imprisonment"

9. Page 2, line 18.

Strike: "20"

Insert: "100"

10. Page 2, lines 19 through 25.

Following: "46-18-222" on line 19

Strike: remainder of line 19 through "\$50,000" on line 25

11. Page 2, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

12. Page 2, line 29.

Strike: "2"

Insert: "4"

Strike: "40"

Insert: "100"

13. Page 3, line 2 through page 3, line 8.

Following: "~~commission~~." on line 2

Strike: remainder of line 2 through "\$50,000" on line 8

14. Page 3, lines 12 and 13.

Following: "be" on line 12

Strike: remainder of line 12 through "imprisoned" on line 13

Insert: "punished by life imprisonment or by imprisonment"

15. Page 3, line 13.

Strike: "40"

Insert: "100"

16. Page 3, lines 14 through 20.

Following: "46-18-222" on line 14

Strike: remainder of line 14 through "\$50,000" on line 20

17. Page 4, lines 8 and 9.

Following: "be" on line 8

Strike: remainder of line 8 through "imprisoned" on line 9

Insert: "punished by life imprisonment or by imprisonment"

18. Page 4, line 9.

Following: second "not"

Insert: "less than 5 years or"

19. Page 4, line 10.

Strike: "5"
Insert: "100"
Following: "years"
Strike: remainder of line 10
Insert: "and may be fined not more than \$10,000"

20. Page 4, lines 11 through 16.
Strike: line 11 in its entirety through "\$10,000" on line 16

21. Page 4, lines 26 and 27.
Following: "be" on line 26
Strike: remainder of line 26 through "imprisoned" on line 27
Insert: "punished by life imprisonment or by imprisonment"

22. Page 4, line 27.
Strike: "20"
Insert: "100"

23. Page 4, line 28 through page 5, line 4.
Following: "\$50,000" on line 28
Strike: remainder of line 28 through "\$50,000" on page 5, line 4

24. Page 5, lines 7 and 8.
Following: "be" on line 7
Strike: remainder of line 7 through "imprisoned" on line 8
Insert: "punished by life imprisonment or by imprisonment"

25. Page 5, line 8.
Following: "term"
Strike: "not to exceed 20"
Insert: "of not less than 4 years or more than 100"

26. Page 5, lines 9 through 15.
Following: "\$50,000" on line 9
Strike: remainder of line 9 through "\$50,000" on line 15

27. Page 6, lines 11 and 12.
Following: "be" on line 11
Strike: remainder of line 11 through "imprisoned" on line 12
Insert: "punished by life imprisonment or by imprisonment"

28. Page 6, line 13.
Strike: "20"
Insert: "100"
Following: "years"
Strike: remainder of line 13
Insert: "and may be fined not more than \$10,000"

29. Page 6, lines 14 through 19.

Strike: line 14 in its entirety through "\$10,000" on line 19

30. Page 6, lines 21 and 22.

Following: "be" on line 21

Strike: remainder of line 21 through "imprisoned" on line 22

Insert: "punished by life imprisonment or by imprisonment"

31. Page 6, lines 22 and 23.

Following: "term" on line 22

Strike: remainder of line 22 through "50" on line 23

Insert: "of not less than 4 years or more than 100"

32. Page 6, line 23.

Following: "years"

Strike: remainder of line 23

Insert: "and may be fined not more than \$10,000"

33. Page 6, lines 24 through 29.

Strike: line 24 in its entirety through "\$10,000" on line 29

34. Page 7, line 7.

Insert: "Section 6. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the

restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

(5) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction."

Renumber: subsequent sections

35. Page 7, line 15.

Strike: "45-5-505,"

36. Page 9, lines 12 and 13.

Strike: "9"

Insert: "10"

37. Page 9, line 14.

Insert: "NEW SECTION. Section 12. Coordination instruction. If [this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void."

We recommend that the amendments considered above to House Bill 157 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

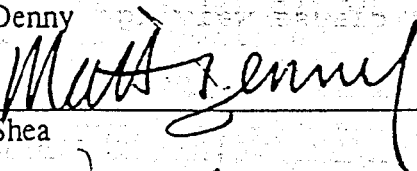
For the House:

Clark

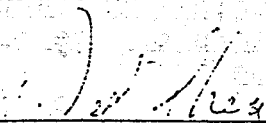


Chair

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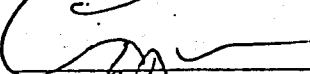


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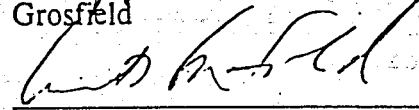
For the Senate:

Crippen

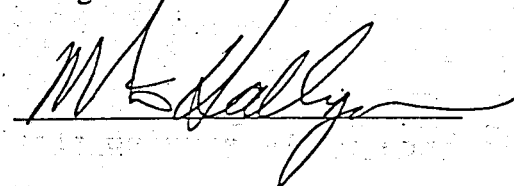


Chair

Grosfeld



Halligan



Amendments to House Bill No. 157
Reference Reading Copy

Requested by Senator Crippen
For the Free Conference Committee

Prepared by Greg Petesch
April 5, 1995

1. Page 7, line 15.
Strike: "45-5-505,"

2. Page 9, line 14.
Insert: "

NEW SECTION. Section 11. Coordination instruction. If
[this act] and House Bill No. 214 are both passed and approved,
then the amendment to section 46-23-502(3)(a) in House Bill No.
214 is void."

HOUSE BILL NO. 157

INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER,
CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT,
MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS,
EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON,
HEAVY RUNNER, SHEA, GALVIN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO
THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN A
COMMUNITY-BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA CORRECTIONAL
INSTITUTION ~~OR PROGRAM~~ FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE;
INCREASING FINES FOR THOSE OFFENSES; PROVIDING THAT THOSE PERSONS ARE TO REGISTER AS
SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC
PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL
IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507,
45-5-625, 46-23-502, 46-23-506, AND 46-23-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual
contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the
county jail for ~~any~~ a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim
or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the
offender shall be:

(a) imprisoned in the state prison for ~~any~~ a term of not less than 2 years or more than 20 years and
may be fined not more than \$50,000; or

(b) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault" ~~shall include~~ includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

46-18-201

Section 2. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be:

(a) imprisoned in the state prison for a term of not less than 2 years or more than ~~20 years~~ life or 99 years and may be fined not more than \$50,000, except as provided in 46-18-222; or

(b) sentenced to the department of corrections and human services for placement by the department in an appropriate ^{Montana} correctional institution or A COMMUNITY-BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$50,000.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be:

(i) imprisoned in the state prison for ~~any~~ a term of not less than 2 years or more than ~~40 years~~ life and may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of~~

1 ~~committing sexual intercourse without consent" includes an attempt to commit the offense or flight after~~
2 ~~the attempt or commission; or~~

3 (ii) sentenced to the department of corrections and human services for placement by the department
4 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
5 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
6 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
7 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
8 be fined not more than \$50,000.

9 (b) If two or more persons are convicted of sexual intercourse with the same
10 victim in an incident in which each offender was present at the location where another offender's offense
11 occurred during a time period in which each offender could have reasonably known of the other's offense,
12 each offender shall be:

13 (i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may
14 be fined not more than \$50,000, except as provided in 46-18-222; or

15 (ii) sentenced to the department of corrections and human services for placement by the
16 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
17 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
18 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
19 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
20 be fined not more than \$50,000.

21 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
22 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
23 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
24 the offense. The amount, method, and time of payment must be determined in the same manner as
25 provided for in 46-18-244.

26 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without
27 consent" includes an attempt to commit the offense or flight after the attempt or commission."

28
29 Section 3. Section 45-5-504, MCA, is amended to read:

30 "45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the

1 person's own sexual desire of himself or the sexual desire of any person, exposes ~~his~~ the person's genitals
2 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm
3 commits the offense of indecent exposure.

4 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to
5 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

6 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be
7 imprisoned in the county jail for a term of not more than 1 year, or both.

8 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

9 (i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not
10 more than 5 years, or both; or

11 (ii) sentenced to the department of corrections and human services for placement by the
12 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
13 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
14 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
15 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
16 be fined not more than \$10,000."

17
18 Section 4. Section 45-5-507, MCA, is amended to read:

19 "45-5-507. Incest. (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,
20 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,
21 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The
22 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,
23 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

24 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but
25 consent is ineffective if the victim is less than 18 years old.

26 (3) A person convicted of incest shall be:

27 (a) imprisoned in the state prison for any a term not to exceed 20 years or be fined an amount not
28 to exceed \$50,000, or both; or

29 (b) sentenced to the department of corrections and human services for placement by the
30 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN

1 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
2 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
3 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
4 be fined not more than \$50,000.

5 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
6 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall
7 be:

8 (a) imprisoned in the state prison for ~~any~~ a term not to exceed 20 years and may be fined not more
9 than \$50,000; or

10 (b) sentenced to the department of corrections and human services for placement by the
11 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN
12 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE
13 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED
14 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may
15 be fined not more than \$50,000.

16 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
17 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
18 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.
19 The amount, method, and time of payment must be determined in the same manner as provided for in
20 46-18-244."

21
22 Section 5. Section 45-5-625, MCA, is amended to read:

23 "45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of
24 children if the person knowingly:

25 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
26 conduct, actual or simulated;

27 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
28 videotapes, or records a child engaging in sexual conduct, actual or simulated;

29 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual
30 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses material referred to in subsection (1)(d) any visual or print medium in which children are engaged in sexual conduct, actual or simulated; or

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of sexual abuse of children shall be:

(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed 20 years, or both; or

(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$10,000.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be:

(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed 50 years, or both; or

(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may be fined not more than \$10,000.

(c) A person convicted of the offense of sexual abuse of children for the possession of material,

as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Section 6. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), ~~45-5-505~~, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a)."

Section 7. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the person's life, except as provided in subsection (2) of this section or during a period of 10 years after conviction, if not imprisoned during that period. ~~If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which the person is in prison.~~

(2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~

1 part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,
2 the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if
3 that court is not in this state, the district court for the judicial district in which the sexual offender resides
4 A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,
5 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of
6 the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender
7 was convicted THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE
8 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL
9 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER
10 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any
11 written or oral statements of the victim or victims. The court may grant the petition upon finding that:
12 (a) the sexual offender has remained a law-abiding citizen; and
13 (b) continued registration is not necessary for public protection and that relief from registration is
14 in the best interests of society.
15 (3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING
16 UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE
17 JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE
18 JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES
19 THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY
20 OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST,
21 SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE
22 JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE
23 OFFENDER'S RIGHT TO PRIVACY."
24

25 Section 8. Section 46-23-507, MCA, is amended to read:

26 "46-23-507. Penalty. A sexual offender who knowingly fails to register under 46-18-254,
27 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more
28 than 5 years or a fine may be fined not to exceed \$250 more than \$5,000 \$10,000, or both."
29

30 NEW SECTION. Section 9. Dissemination of information in register. Information in the register

1 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in
2 44-5-103, except that:

3 (1) the name of a registered sexual offender is public criminal justice information, as defined in
4 44-5-103; and

5 (2) before releasing from a state prison an inmate who is a sexual offender, if the department
6 believes that release of information concerning the inmate is necessary for public protection, the department
7 shall petition the district court for the judicial district in which the prison is located or for the judicial district
8 in which the inmate intends to reside for an order allowing the department to release relevant and necessary
9 register information regarding the inmate to the public. The court shall grant the order if the court finds
10 that the information is necessary for public protection.

11
12 **NEW SECTION.** Section 10. Codification instruction. [Section 9] is intended to be codified as an
13 integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

14 -END-

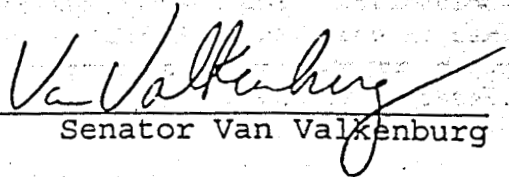
SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 22, 1995 1:56 pm

Mr. Chairman: I move to amend HB 157 (reference copy -- salmon).

ADOPT
V.V.

REJECT

Signed: 

Senator Van Valkenburg

That such amendments read:

1. Title, line 10.

Following: "PLACED"

Insert: "IN A COMMUNITY-BASED PROGRAM FOR LIFE OR"

2. Title, line 11.

Following: "APPROPRIATE"

Insert: "MONTANA"

Strike: "OR PROGRAM"

Insert: "FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE"

3. Page 2, line 1.

Page 2, line 17.

Page 2, line 27.

Page 3, line 6.

Page 3, line 29.

Page 4, line 13.

Page 4, line 21.

Page 5, line 22.

Page 5, line 29.

Strike: "an appropriate correctional institution or"

Insert: "a community-based"

Following: "life"

Insert: "or in an appropriate Montana correctional institution for any period not exceeding the maximum possible prison sentence without the right to earn good time, to be released on parole, or to be placed on furlough or supervised release"

-END-



Amd. Coord.

HB 157
SENATE
661356CW.SPV

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0157, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill allowing certain sex offenders to be sentenced to the Department of Corrections and Human Services (DCHS) for life, to be placed in an appropriate correctional institution or program, increasing fines for these offenses, providing that offenders register as sexual offenders for life unless the court finds that public protection no longer demands registration, and regulating the dissemination of material in the sex offender register.

ASSUMPTIONS:

1. Current financial profile of prospective defendants will continue.
2. For the offenders defined in this bill, the length of stay in Montana State Prison will not change.
3. The five year average number of offenders convicted of the crimes defined in this bill is 185 persons per year.
4. The increase in workload will be experienced in the Probation and Parole Bureau of the DCHS. Probation and Parole will need 2.00 FTE in FY96 and 3.00 FTE in FY97. These FTE and their associated operating budgets result in total general fund costs of \$110,038 in FY96 and \$114,669 in FY97, as included in the Governor's proposed budget.
5. The duration of registration under 45-18-254 and 45-18-255, MCA, will increase from the current 10 years to a lifetime registration. The costs of registering these offenders from the current 10 years to a lifetime registration will be minimal and DCHS will absorb these costs within its recommended budget.

FISCAL IMPACT:

No further impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This bill will increase the number of convicted sex offenders in the corrections system at an estimated rate of 185 per year. Probation and Parole will continue to need additional FTE to supervise these people and maintain a manageable caseload.

TECHNICAL NOTES:

Historically, most defendants convicted under this section are either indigent or have limited financial resources. A court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine [see 46-18-231, MCA].

Dave Lewis 1-16-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Matt Denny 1-17-
MATT DENNY, PRIMARY SPONSOR DATE

Fiscal Note for HB0157, as introduced

HB 157

Amendments to House Bill No. 157
Corrected Reference As Amended Reading Copy (salmon)

Requested by Conference Committee on HB 157
For the Committee of the Whole

Prepared by Valencia Lane
April 7, 1995

1. Title, line 9.
Following: "AN ACT"
Strike: "ALLOWING"
Insert: "INCREASING PENALTIES FOR"
2. Title, lines 9 through 13.
Following: "SEX" on line 9
Strike: remainder of line 9 through first "THOSE" on line 13
3. Title, line 13.
Following: "OFFENSES;"
Insert: "INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES
TO LIFE IMPRISONMENT"
Strike: "THOSE PERSONS"
Insert: "CERTAIN SEXUAL OFFENDERS"
4. Title, line 17.
Following: "45-5-625,"
Insert: "46-18-202,"
5. Page 1, lines 23 and 29.
Following: "be" on line 28
Strike: remainder of line 28 through "imprisoned" on line 29
Insert: "punished by life imprisonment or by imprisonment"
6. Page 1, line 29.
Strike: "20"
Insert: "100"
7. Page 1, line 30 through page 2, line 6.
Following: "\$50,000" on line 30
Strike: remainder of line 30 through "\$50,000" on page 2, line 6
8. Page 2, lines 17 and 18.
Following: "be" on line 17
Strike: remainder of line 17 through "imprisoned" on line 18
Insert: "punished by life imprisonment or by imprisonment"
9. Page 2, line 18.
Strike: "20"
Insert: "100"
10. Page 2, lines 19 through 25.
Following: "46-18-222" on line 19
Strike: remainder of line 19 through "\$50,000" on line 25

11. Page 2, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

12. Page 2, line 29.

Strike: "2"

Insert: "4"

Strike: "40"

Insert: "100"

13. Page 3, line 2 through page 3, line 8.

Following: "~~commission~~-" on line 2

Strike: remainder of line 2 through "\$50,000" on line 8

14. Page 3, lines 12 and 13.

Following: "be" on line 12

Strike: remainder of line 12 through "imprisoned" on line 13

Insert: "punished by life imprisonment or by imprisonment"

15. Page 3, line 13.

Strike: "40"

Insert: "100"

16. Page 3, lines 14 through 20.

Following: "46-18-222" on line 14

Strike: remainder of line 14 through "\$50,000" on line 20

17. Page 4, lines 8 and 9.

Following: "be" on line 8

Strike: remainder of line 8 through "imprisoned" on line 9

Insert: "punished by life imprisonment or by imprisonment"

18. Page 4, line 9.

Following: second "not"

Insert: "less than 5 years or"

19. Page 4, line 10.

Strike: "5"

Insert: "100"

Following: "years"

Strike: remainder of line 10

Insert: "and may be fined not more than \$10,000"

20. Page 4, lines 11 through 16.

Strike: line 11 in its entirety through "\$10,000" on line 16

21. Page 4, lines 26 and 27.

Following: "be" on line 26

Strike: remainder of line 26 through "imprisoned" on line 27

Insert: "punished by life imprisonment or by imprisonment"

22. Page 4, line 27.

Strike: "20"

Insert: "100"

23. Page 4, line 28 through page 5, line 4.
Following: "\$50,000" on line 28
Strike: remainder of line 28 through "\$50,000" on page 5, line 4

24. Page 5, lines 7 and 8.
Following: "be" on line 7
Strike: remainder of line 7 through "imprisoned" on line 8
Insert: "punished by life imprisonment or by imprisonment"

25. Page 5, line 8.
Following: "term"
Strike: "not to exceed 20"
Insert: "of not less than 4 years or more than 100"

26. Page 5, lines 9 through 15.
Following: "\$50,000" on line 9
Strike: remainder of line 9 through "\$50,000" on line 15

27. Page 6, lines 11 and 12.
Following: "be" on line 11
Strike: remainder of line 11 through "imprisoned" on line 12
Insert: "punished by life imprisonment or by imprisonment"

28. Page 6, line 13.
Strike: "20"
Insert: "100"
Following: "years"
Strike: remainder of line 13
Insert: "and may be fined not more than \$10,000"

29. Page 6, lines 14 through 19.
Strike: line 14 in its entirety through "\$10,000" on line 19

30. Page 6, lines 21 and 22.
Following: "be" on line 21
Strike: remainder of line 21 through "imprisoned" on line 22
Insert: "punished by life imprisonment or by imprisonment"

31. Page 6, lines 22 and 23.
Following: "term" on line 22
Strike: remainder of line 22 through "50" on line 23
Insert: "of not less than 4 years or more than 100"

32. Page 6, line 23.
Following: "years"
Strike: remainder of line 23
Insert: "and may be fined not more than \$10,000"

33. Page 6, lines 24 through 29.
Strike: line 24 in its entirety through "\$10,000" on line 29

34. Page 7, line 7.
Insert: "Section 6. Section 46-18-202, MCA, is amended to read:
"46-18-202. Additional restrictions on sentence. (1) The
district court may also impose any of the following restrictions

or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

- (a) prohibition of the defendant's holding public office;
- (b) prohibition of the defendant's owning or carrying a dangerous weapon;
- (c) restrictions on the defendant's freedom of association;
- (d) restrictions on the defendant's freedom of movement;
- (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

(5) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction."

Renumber: subsequent sections

35. Page 7, line 15.
Strike: "45-5-505,"

36. Page 9, lines 12 and 13.
Strike: "9"
Insert: "10"

37. Page 9, line 14.
Insert: "NEW SECTION. Section 12. Coordination instruction. If

[this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void."